TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 237

LOUIS BEYER, APPELLANT,

vs.

CAROLINE LE FEVRE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 22, 1901.

(18,031.)

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In the Court of Appeals of the District of Columbia.

LOUIS BEYER ET AL., Appellants, vs. CAROLINE LE FEVRE. } No. 1009.

a Supreme Court of the District of Columbia.

CAROLINE LE FEVRE vs. LOUIS BEYER, LOUIS BEYER, JUNIOR; HELEN B. JOHNSON, Louis Beyer, Jr., Executor; Myer Cohen and Adolph G. Wolf, Trustees. } No. 20324. In Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed Apr. 7, 1899.

In the Supreme Court of the District of Columbia, the 7th Day of April, A. D. 1899.

CAROLINE LE FEVRE, Plaintiff, vs. LOUIS BEYER, LOUIS BEYER, JUNIOR; HELEN B. JOHNSON; Louis Beyer, Jr., Executor; Meyer Cohen and Adolph G. Wolf, Trustees. } Equity. No. 20324.

To the supreme court of the District of Columbia, holding an equity court:

The plaintiff states as follows:

1st. That she is a citizen of the United States and a resident of the District of Columbia.

2nd. That all the defendants are citizens of the United States and residents of the District of Columbia, and are sued in their individual capacity, except the defendants Myer Cohen and Adolph G. Wolf, who are sued in this action as trustees under a deed of trust hereinafter more fully set forth and recited.

3rd. That heretofore, to wit, on the eleventh day of May, A. D. 1896, one Mary Beyer, late of the District aforesaid, deceased,
2 executed and delivered a certain deed of trust to Charles C. Glover and Myron M. Parker as trustees, conveying to them in fee-simple the property therein described, situated in the District of Columbia, to secure the payment of the sum of $2,800.00, as therein set forth (a certified copy of which is herewith filed, marked Plaintiff's Exhibit C. L., "A," and prayed to be read, taken, and considered as part hereof).

4th. That the sum of money intended to be secured by the execution and delivery of said deed of trust has never been repaid nor has the legal title to the real estate thereby conveyed ever been released, retransferred, or reconveyed by the trustees therein named to the said Mary Beyer, but is still outstanding in them.

5th. That during her lifetime the said Mary Beyer intermarried with Louis Beyer, one of the defendants, but no children were born to the said Mary and Louis.

6th. That the said Mary Beyer departed this life on or about the 26th day of July, 1896, leaving as her only heirs-at-law, distributees, and next of kin two sisters, to wit, Elizabeth K. Maus and this plaintiff, and one nephew, to wit, the defendant Louis Beyer, Jr., who is the son of a deceased sister of said Mary Beyer, who died prior to the death of said Mary.

7th. That at the time of her decease the said Mary Beyer was in the 65th year of her age and had been in feeble health for a number of years prior thereto, and the treatment which was necessary in her bodily ailment and the drugs administered to her for the relief thereof so impaired her mental faculties as to render her incapable of understanding the most ordinary affairs of life or of knowing or
3 appreciating the nature, character, value, or extent of her estate, her right to exercise dominion over the same, the relatives whom she had or the natural objects of her bounty, and wholly incapable of executing a valid deed or contract, and that this condition of mind and body existed for some time prior to her decease and was her condition down to the day of her death and upon the date and at the time of the alleged execution of said paper-writing.

8. That on or about the 14th day of July, A. D. 1896, while the said Mary Beyer was so feeble and suffering, the defendants Louis Beyer, Jr., and Helen B. Johnson had a paper-writing purporting to be a last will and testament, prepared under their direction and in accordance with their instructions by a lawyer of their own selection, whom this plaintiff is informed and believes, and therefore alleges, the said Mary Beyer had never seen, and induced the said Mary Beyer to affix her name to the same while she was upon her bed of death and so feeble, both mentally and physically, that she was unable to resist their importunities and was not a free agent or able to form or express her wishes as to the disposition of her estate.

9th. That by the terms and provisions of said paper-writing purporting to be her last will and testament of said Mary Beyer (a certified copy whereof is filed herewith as part hereof, marked Plaintiff's

Exhibit C. L., "B"), after a slight request as to her husband's treatment, the entire estate and property of the said Mary Beyer of every description is devised and bequeathed to the defendants Louis Beyer, Jr., and Helen B. Johnson, and the said Louis Beyer, Jr., is constituted and appointed the sole executor thereof without bond.

10th. That the terms and provisions of said pretended last
4 will and testament were concealed from the defendant Louis Beyer, the husband, by the said Louis Beyer, Jr., and Helen B. Johnson until after the death of said Mary Beyer, because they were afraid that he would protest against the consummation of their unlawful schemes and thwart and prevent them, and they procured the signature to said paper-writing during his absence, which absence they had cunningly contrived to bring about.

11th. That said Mary Beyer's death occurred less than two weeks after the pretended execution of said paper-writing, to wit, on July the 26th, A. D. 1896.

12. That said Mary Beyer's personal property and effects, so far as this plaintiff has been able to ascertain, amounted to but little; but this plaintiff is informed that the equity of redemption which the said Mary owned at the time in the property, more fully set forth in Plaintiff's Exhibit C. L., "A," already referred to in paragraph 3 of this bill, is very valuable, being estimated, as this plaintiff is informed, at upwards of twenty-five thousand ($25,000) dollars.

13th. That about one month after the decease of the said Mary Beyer, to wit, on or about the 29th day of August, 1896, the said Louis Beyer, Jr., propounded the said paper-writing in the supreme court of the District of Columbia, holding a special term for orphans' court business, as and for the last will and testament of said Mary Beyer, and the same was shortly thereafter admitted to probate in common form and without contest, and letters testamentary thereon were granted to said defendant, Louis Beyer, Jr., who qualified as such executor by giving bond in the penalty of three hundred ($300.00) dollars.

14th. That soon after the death of said Mary Beyer and the pro-
pounding of said paper-writing for probate the defendant
5 Louis Beyer filed in said supreme court of the District, holding a special term for orphans' court business, his caveat to said paper-writing and to the admission thereof to probate and the grant of letters testamentary thereupon; but in consideration of the conveyance by said Louis Beyer, Jr., and said Helen B. Johnson, the devisees under said alleged last will and testament of all their interest in and to a portion of said real estate (which this plaintiff is informed and believes amounts in value to one-half thereof), the said defendant, Louis Beyer, caused his said caveat to be withdrawn.

15th. This plaintiff further alleges that subsequent to the events set forth in the two next preceding paragraphs of this bill of complaint her sister, Elizabeth K. Maus, in consideration of a large money payment by said Louis Beyer, Jr., and Helen B. Johnson, to her (the exact amount of which is to this plaintiff unknown), executed

and delivered to said Louis Beyer, Jr., and Helen B. Johnson a release, discharge, and quitclaim of and to all her estate and interest in and to the estate of the said Mary Beyer, deceased.

16th. That subsequent to the execution of the deed by said Louis Beyer, Jr., and Helen B. Johnson, purporting to convey certain of said real estate of which *of which* said Mary Beyer died seized to said Louis Beyer, the said Louis Beyer, on May 12th, 1897, conveyed to the defendants Myer Cohen and Adolph G. Wolf, in trust to secure the payment of $2,000.00 to one Carl Schoenhop, all the property which the said Louis Beyer, Jr., and Helen B. Johnson pretended to convey to him, the said Louis Beyer, and which is a portion of the said real estate and equity of redemption of which the said Mary Beyer died seized or possessed; which deed of trust has
6 been recorded among the land records of the District in Liber 2206, folio 474, as will appear from a certified copy thereof, herewith filed, marked Plaintiff's Exhibit C. L., "C," and prayed to be taken as part hereof.

Prayers.

In consideration of the premises, the plaintiff prays:

1st. That the paper-writing bearing date the 14th day of July, 1896, and purporting to be the last will and testament of Mary Beyer, be decreed to be not her last will and testament.

2nd. That the deed of trust from Louis Beyer to the defendants Myer Cohen and Adolph G. Wolf, trustees, be decreed to be void, invalid, and inoperative.

3rd. That the defendants Myer Cohen and Adolph G. Wolf, trustees under said deed, and each and every of them, be restrained and forever enjoined from enforcing or attempting to enforce the terms, provisions, or conditions of said deed of trust.

4th. That a receiver may be appointed by this honorable court to take charge of all the real estate of which the said Mary Beyer died seized, and to collect the rents, issues, and profits thereof during the pendency of this suit.

5th. That the defendants Louis Beyer, Louis Beyer, Jr., and Helen B. Johnson be decreed to render an account of all the rents, issues, and profits of said estate collected by them or either of them since the decease of the said Mary Beyer, and to pay over the amount of said collections to the receiver to abide the results of this action.

7 6th. That this plaintiff may have such other and further relief as her case may require and this honorable court may be competent to decree.

7th. That the writ of subpœna may issue out of and under the seal of this honorable court, directed to the said Louis Beyer, Louis Beyer, Jr., Helen B. Johnson, Louis Beyer, Jr., executor of the last will and testament of Mary Beyer, deceased, and Myer Cohen and Adolph G. Wolf, trustees, commanding them to appear and answer the exigencies of this petition or bill of complaint, answers under

oath being hereby waived, and to abide by and perform such order or decree as may be passed in said cause.

CAROLINE LEFEVRE.

CHAS. POE,
CLAYTON E. EMIG,
Solicitors for the Plaintiff.

DISTRICT OF COLUMBIA:

I do solemnly swear that I have read the petition by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

CAROLINE LEFEVRE.

Subscribed to before me this 5th day of April, 1899.

EBENEZER SOUTHALL,
[SEAL.] *Notary Public.*

8 EXHIBIT C. L., "A," TO BILL.

Filed Apr. 7, 1899.

Mary Beyer *et vir* to Glover and Parker, Trs. } Recorded May 11, 1896, 11.26 a. m. Trust.

Liber No. 2107, folio 367 *et seq.*; fee, $2.25; st., 10 cts.

This deed, made this 11th day of May, A. D. 1896, witnesseth, that Mary Beyer and Louis Beyer, her husband of the District of Columbia (said Mary Beyer acting and contracting herein in relation to her separate estate), parties hereto of the first part for the purpose of carrying into full effect the uses and trusts hereinafter declared and for and in consideration of five dollars to them in hand paid by Charles C. Glover and Myron M. Parker of the said District parties hereto of the second part receipt of which, in current money of the United States at the date of delivery hereof, is hereby acknowledged, have bargained and sold, granted, enfeoffed and conveyed and do hereby bargain and sell, grant, enfeoff and convey unto and to the use of the said Charles C. Glover and Myron M. Parker, as joint tenants their heirs and assigns, the following-described land and premises, with the improvements, easements, rights, ways and appurtenances thereunto belonging situate and lying in the county of Washington in the District of Columbia, namely: All of lots numbered seventy-one (71) and seventy-two (72) in Haw's subdivision of part of the tract of land known as Mount Pleasant, as per plat recorded respectively in Liber J. A. S. No. 229 folio 341, of the land records of the District of Columbia, and in Liber C. J. U. folio 48, of the records of the office of the surveyor of the said District.

9 To have and to hold, the said described land with the improvements, rights, ways, easements and appurtenances unto

and to the use of the said Charles C. Glover and Myron M. Parker, as joint tenants, their heirs and assigns, in and upon the uses and trusts following and to and for no other use, intent or purpose that is to say, first, to secure the full and punctual payment of two certain joint and several promissory notes of even date with these presents, in the sum of fourteen hundred dollars ($1,400) each made and *signed by the said parties of the first part and given for money* loaned said Mary Beyer for the benefit of and in relation to her separate estate and payable to the order of Arthur T. Brice three years after date; and interest thereon from date and until paid, at the rate of five per centum per annum, payable semi-annually; each instalment of interest to bear interest after maturity if not then paid at the rate aforesaid. Principal and interest payable at the banking-house of Riggs and Company, Washington, D. C. And also to secure the reimbursement of the holder or holders of said notes and the trustees herein named on the survivor, for any and all costs and expenses including reasonable counsel fees incurred or paid on account of any litigation at law or in equity which may arise in respect of this trust or the indebtedness or property herein mentioned, while this trust continues. Second, until any sale and conveyance as hereinafter provided for to permit the said Mary Beyer her heirs and assigns, to possess and enjoy said described premises and to receive the issues and profits thereof and on full payment of said notes and interest thereon, and all sums advanced or expended in respect of this trust (including half commissions, to the trustees on the debt secured in case of advertisement hereunder and no sale), to release and reconvey in fee at the expense of the releasee unto the said Mary Beyer or the person or persons then claiming under her, the aforesaid land and premises. Third, upon any default being made in payment of either of said notes when due or any extensions or renewals thereof, or any instalment of interest thereon; or in payment of any taxes now or becoming due on said land and premises while this trust exists, after demand made for payment of such taxes, or in keeping while this trust exists, a fire insurance on the buildings on said land in an amount not less than $2,500 and to the satisfaction of the party hereby secured and the policy or policies duly assigned for the benefit of this trust or in payment on demand of any sum or sums advanced by the holder or holders of said notes on account of any costs and expenses of this trust or on account of any such taxes or insurance or expense of litigation with interest thereon at 6 per centum per annum from date of advance (it being hereby agreed that on any default in payment of said costs, expenses or taxes insurance or expense of litigation as aforesaid the same may be paid by the holder or holders of said notes and all sums advanced in so doing with interest as aforesaid shall forthwith attach as a lien hereunder and be demandable at any time) then and in either event the said parties hereto of the second part, or the survivor of them or his heirs or substituted trustees shall sell at public auction, the hereinabove granted and described real estate and improvements, at such time and place upon such terms and condi-

tions, with such postponement of sale or resale and after such previous public notice not less than ten days as to the said parties hereto of the second part or the survivor or his heirs or sub-
11 stituted trustee shall seem best for the interest of all parties concerned; (and the terms of sale being complied with), shall convey in fee to, and at the cost of the purchaser, the premises so sold, such purchaser being hereby discharged from all liability for the application of the purchase-money; and shall apply the proceeds of sale (after paying all expenses of sale, all taxes thereon due all sums advanced for costs or taxes, or insurance or expense of litigation as aforesaid, with interest as aforesaid, and a trustee's commission of five per centum on the gross amount of sales), to the payment of the aforesaid indebtedness, or so much thereof as may remain unpaid, whether then due or not, with interest unpaid thereon at the rate aforesaid to the date of payment, paying over the surplus, if any, to the said Mary Beyer her heirs or assigns. And the said parties of the first part for themselves and their heirs, do hereby covenant with said parties of the second part, or the survivor his heirs and assigns or substituted trustee to forever warrant and defend *and* the title, to said granted premises unto the said parties hereto of the second part, the survivor, his heirs and assigns or substituted trustee, for the uses and purposes hereinbefore declared, from and against all persons claiming the same or any part thereof by through or under the said parties hereto of the first part; and at the cost of the person requesting the same to execute and deliver any other or further deed or deeds deemed by legal counsel necessary to more fully assure the title to said granted premises unto the said parties hereto of the second part, the survivor, his heirs and assigns, for the uses aforesaid. In testimony whereof, the said parties of the
12 first part have hereunto set their hands and seals the day and year first hereinabove written.

MARY BEYER. [SEAL.]
LOUIS BEYER. [SEAL.]

Signed, sealed, and delivered in presence of—
LOUIS BEYER, JR.

DISTRICT OF COLUMBIA, *To wit:*

I, Louis Beyer, Jr., a notary public in and for the District aforesaid, hereby certify that Mary Beyer and Louis Beyer, her husband, the grantors in and who are personally well known to me as the persons who executed the aforegoing and annexed deed, dated May 11th, A. D. 1896, personally appeared before me in the said District and acknowledged the said deed to be their act and deed; and the said Mary Beyer being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this 11th day of May, A. D. 1896.

LOUIS BEYER, JR.,
Notary Public.

[NOTARIAL SEAL.]

DISTRICT OF COLUMBIA:

OFFICE OF THE RECORDER OF DEEDS, *April* 3, 1899.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 2107, fol. 367 *et seq.*, one of the land records of the District of Columbia.

GEO. F. SCHAYER,
Dep. Recorder of Deeds.

[SEAL.]

(Stamp.)

13 EXHIBIT C. L., "B," TO BILL.

Filed Apr. 7, 1899.

In the name of God, Amen.

I Mary Beyer of the city and county of Washington and District of Columbia being now of sound and disposing mind, do make, ordain, publish and declare this to be my last will and testament: That is to say, first after all my lawful debts are paid and discharged the residue of my estate, real and personal I give, devise, bequeath, and dispose of as follows: to wit, all the furniture and personal effects now in the home, number 2258 Brightwood avenue I desire to remain there during the life of my husband Louis Beyer or so long as it remains the family home and in the event of the house not being retained as a family home then the furniture and all other personal effects belonging to me are to go to and belong to my nephew and adopted son born Charles Lewis Smith but adopted by me at birth and thereafter always called Louis Beyer Junior.

To my sister Elizabeth Kersinski Maus of Philadelphia Pa. I leave five dollars.

To my sister Caroline Kersinski Lefevre of Brookland D. C. I leave five dollars.

To my niece Helen J. Fenton of Washington, D. C., I leave five dollars.

All the rest and residue of my estate, real, personal and mixed, of which I may die seized and possessed, whatsoever and wheresoever, of what kind, nature and quality soever the same may be, and not hereinabove given or disposed of, I hereby give, devise and bequeath, unto my nephew and adopted son, Louis Beyer, Junior, and
14 Helen B. Johnson my niece in equal shares, as tenants in common and not as joint tenants, their heirs and assigns, absolutely and forever.

Having full faith and confidence in the honesty, integrity and affection of my said adopted son and of my said niece, I leave them all the property stated herein knowing that they will provide a home

and home comforts for Louis Beyer Senior during his natural life but this is not to be construed to mean that said Louis Beyer Junior and Helen B. Johnson are to be restricted from disposing of any or all of the property if their judgment so dictates but in the event of disposing of all of the property before the death of Louis Beyer Senior they are to always maintain a home and home comforts for my beloved husband, Louis Beyer Senior.

Likewise I make, constitute, and appoint, my adopted son born Charles Lewis Smith but always known as Louis Beyer Junior to be executor of this my last will and testament, hereby revoking all former wills made by me and I request that he be not required to give bond as such executor.

In witness whereof I have hereunto set my hand, subscribed my name and affixed my seal this fourteenth day of July in the year of our Lord one thousand eight hundred and ninety-six in my home at Washington, D. C.

MARY BEYER. [SEAL.]

The above-written instrument was subscribed by the said Mary Beyer in our presence and acknowledge- by her to each of us, and she at the same time published and declared the above instrument so subscribed to be her last will and testament, and we at the
15 testator's request and in her presence and in the presence of each other have signed our names as witnesses hereto and written opposite our names our respective places of residence.

P. J. BRENNAN,
1418 *F St. N. W., Washington, D. C.*
WADE H. ATKINSON,
707 12*th St. N. W., Washington, D. C.*
THOMAS C. SMITH,
1133 12*th St. N. W., Washington, D. C.*

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

(Stamp.)

DISTRICT OF COLUMBIA, *To wit:*

I, J. Nota McGill, register of wills for the District of Columbia and *ex officio* clerk of the supreme court of the District of Columbia, holding a special term for orphans' court business, do certify that the aforegoing is a true copy of the original last will and testament of Mary Beyer, deceased, filed August 20th, 1896, fully proven, and admitted to probate and record on the 25th day of September, *1st* 1896.

In testimony whereof I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this 1st day of April, A. D. 1899.

[SEAL.] J. NOTA McGILL.

16 EXHIBIT C. L., "C," TO BILL.

Filed Apr. 7, 1899.

Louis Beyer, Senior, to Cohen and Wolf, Trs. } Recorded May 13, 1897, 12.40 p. m. Trust.

Liber No. 2206, folio 474 *et seq.*; fee, $2.25; st., 10 cents.

This indenture, made this tenth day of May in the year of our Lord one thousand eight hundred and ninety-seven, by and between Louis Beyer, Senior, widower of the city of Washington, District of Columbia, party of the first part and Myer Cohen and Adolph G. Wolf trustees of the city of Washington, District of Columbia parties of the second part. Whereas, the said Louis Beyer Senior is justly indebted unto Carl Schoenhof, in the full sum of two thousand ($2,000) dollars for which the said party of the first part has made and executed one (1) promissory note for two thousand dollars ($2,000) of even date herewith payable five (5) years after date with interest at the rate of six (6%) per centum per annum payable semi-annually to the order of Carl Schoenhof at the Second national bank and ten (10) semi-annual interest notes all dated May 10, 1897, for sixty dollars ($60) each payable to the order of Carl Schoenhof, 6, 12, 18, 24, 30, 36, 42, 48, 54 and 60 months after date at the Second National Bank of Washington, D. C. And whereas, the party of the first part, desires to secure the prompt payment of said debt, and the interest thereon, when and as the same shall become due and payable, together with all costs and expenses that may accrue thereon:

Now therefore this indenture, witnesseth, that the party of the first part, in consideration of the premises and of one dollar, law-
17 ful money of the United States of America, to him in hand paid by the parties of the second part the receipt of which, before the sealing and delivery of these presents is hereby acknowledged has given, granted, bargained and sold, aliened, enfeoffed, released and conveyed and does by these presents give, grant, bargain and sell, alien, enfeoff, release and convey unto the parties of the second part, the survivor of them, his heirs and assigns, the following-described land and premises, situate in the county of Washington, District of Columbia, known and distinguished as lots seventy-one (71) and the full front on Eighth (8th) street extended by a depth of seventy (70) feet of lot numbered seventy-two (72) in Haw's subdivision of part of Mount Pleasant as per plat recorded in the office of the surveyor for the District of Columbia in Liber "C. J. U." folio forty-eight (48) in the county of Washington, District of Columbia, together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in any wise appertaining, and all the estate right, title interest and claim either at law or in equity or otherwise however of the party of the first part, of, in, to or out of the said land and premises.

To have and to hold, the said land and premises and appurtenances unto and to the only use of the parties of the second part, the survivor of them, his heirs and assigns.

In and upon the trusts nevertheless hereinafter declared, that is in trust to permit said Louis Meyer, Senior, his heirs or assigns, to use and occupy the said described land and premises and the rents, issues and profits thereof, to take have and apply to and for their sole use and benefit until default be made in the payment of one
18 promissory note hereby secured or any instalment of interest thereon when and as the same shall become due and payable or any proper cost, charge, commission or expense in and about the same. And upon the full payment of all the said notes and the interest thereon and all other proper costs, charges, commissions, half commissions and expenses at any time before the sale hereinafter provided for to release and reconvey the said described premises unto the said party of the first part his heirs and assigns at his or their cost. And upon this further trust, upon any default or failure being made in the payment of the notes or of any instalment of principal or interest thereon when and as the same shall become due and payable or any proper cost, charge, commission or expense in and about the same, then and at any time thereafter, to sell the said described land and premises at public auction upon such terms and conditions at such time and place and after such previous public advertisement as the parties of the second part, the survivor of them his heirs or the trustee acting in the execution of this trust, shall deem advantageous and proper: and to convey the same in fee-simple to and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money: and of the proceeds of said sale or sales; first to pay all proper costs, charges and expenses, including all taxes, general and special due upon said land and premises at time of sale, and to retain as compensation a commission of — per centum on the amount of the said sale or sales. Second, to pay whatever may then remain unpaid of the said note and the interest thereon whether the same shall be due or not, and last, to pay the remainder of said proceeds if any there be, to said party of the first part
19 his heirs or assigns. And the said party of the first part, does hereby agree, at his own cost during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled to keep the said improvements insured against loss by fire in the name and to the satisfaction of the parties of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and also to pay all taxes and assessments, both general and special, that may become due on or be assessed against said land and premises during the continuance of this trust and that upon any default or neglect to so insure, or pay taxes and assessments any party secured hereby may have said improvements insured and pay said taxes and assessments, and the expense thereof shall be a charge hereby secured and bear interest at the same rate as the said indebtedness hereby secured. And

it is further agreed, that if the property shall be advertised for sale under the provisions of this deed and not sold then the said trustees shall be entitled to one-half the commission above provided to be computed on the amount of the debt hereby secured. In witness whereof, the party of the first part, has hereunto set his hand and seal on the day and year first hereinbefore written.

LOUIS BEYER, Sr. [SEAL.]

Signed, sealed, and delivered in the presence of—
S. WOLF.
EDMUND M. POST.

DISTRICT OF COLUMBIA, *To wit:*

I, Simon Wolf, a notary public in and for the said District of Columbia, do hereby certify that Louis Beyer, Senior, who is
20 personally well known to me as the grantor in and the person who executed the foregoing and annexed deed, bearing date on the tenth day of May, A. D. 1897, personally appeared before me in said District and acknowledged the said deed to be his act and deed. Given under my hand and official seal this 13th day of May, A. D. 1897.

[NOTARIAL SEAL.] SIMON WOLF.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, *April* 3, 1899.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 2206, fol. 474 *et seq.*, one of the land records of the District of Columbia.

[SEAL.] GEO. F. SCHAYER,
(Stamp.) *Dep. Recorder of Deeds.*

Order Setting Cause for Hearing.

Filed Apr. 12, 1899.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

CAROLINE LEFEVRE
vs. } Equity. No. 20324, Docket 46.
LOUIS BEYER ET AL.

Ordered by the court, this 12th day of April, that the prayer for the writ of injunction and order appointing a receiver, contained in the bill of complaint in this cause, be set down for hearing
21 on Tuesday, the eighteenth day of April, 1899, at 10 o'clock a. m., provided a copy of this order be served on the defendants or their solicitors on or before April 14th, 1899.

CHAS. C. COLE,
Asso. Justice.

Answer of Defendant Louis Beyer, Jr., and Response to Rule to Show Cause.

Filed Apr. 18, 1899.

In the Supreme Court of the District of Columbia.

CAROLINE LEFEVRE
vs.
LOUIS BEYER ET AL. } In Equity. No. 20324.

The defendant Louis Beyer, Jr., in his own right and as executor under the last will and testament of Mary Beyer, deceased, for answer to the bill of complaint herein says:

1 to 6. He admits the allegations of paragraphs 1 to 6 of said bill.

7. He admits that said Mary Beyer at the time of her decease was about sixty-five years of age, and that her health had been somewhat impaired for some years prior thereto, but he denies that her mental health was impaired either by physical weakness or by the administration to her of drugs or medicines. He denies that she was in anywise incapable of understanding the ordinary
22 affairs of life or of knowing the value or extent of her estate or her rights in respect thereto. He says she knew exactly the relationship of those connected with her, and that she demonstrated her capability to select the natural objects of her bounty by selecting as her principal legatees and devisees this defendant and Helen B. Johnson. He says that in the very early life of this defendant and said Helen B. Johnson the said Mary Beyer adopted them as her children, took them to live with her and assumed the care of a mother over them; that she became devotedly attached to them and they to her, and that the sisters of the said Mary Beyer were on very distant terms with her, rarely saw her, and in nowise ministered to her or showed any affection for her.

He denies that either prior to or at the time of executing the said will said Mary Beyer was incapable of executing a valid deed or contract.

He also denies that at any time prior to her death she was incapable of freely exercising her mental faculties.

8. He admits that on the 14th day of July, 1896, said Mary Beyer executed and published, in due form of law, the paper-writing of that date, which the defendant, as executor named therein, propounded, and which has been admitted to probate and record by this court.

He denies that this defendant and Helen B. Johnson procured the preparation of said will, but avers the fact to be that some time prior to the execution of said will said Mary Beyer sent for an attorney to prepare her will; that this attorney called in response to her request and took his instructions from her; that he prepared a draft
23 of the will and at a second interview submitted it to her, when she called attention to certain provisions which did not suit

her. The said attorney then took the draft with him and afterwards returned, and at a third interview submitted the corrected paper, which she fully understood, approved, and duly published.

He denies that he in anywise induced said Mary Beyer to sign the said will. He denies that she was importuned by him to sign the same, and says she executed the paper voluntarily and because it expressed her intelligent volition in the premises.

9. He admits that by the said will devises and bequests are made, as averred in paragraph 9 of the bill.

10. He denies that he concealed the contents of said will from said Louis Beyer, or that this defendant was unwilling that said Louis Beyer should be fully acquainted with its contents. He denies that he was party to any scheme to procure execution of said will or that he made any effort to bring about the absence of said Louis Beyer when said will was executed.

11. He admits that Mary Beyer died July 26th, 1896.

12. He admits that said Mary Beyer's personalty was of trifling value, and says that as a result he has largely overpaid her estate, and he denies that her real estate was of any such value as is asserted by complainant, though he says its value is immaterial in this
24 controversy, seeing that complainant has no interest in it.

13. He admits the allegations of paragraph 13 of said bill, except he says that said complainant was duly notified of the application to probate said will and made no objection whatever.

14. He denies that said Louis Beyer soon after probate of said will filed a caveat thereto, which he afterwards dismissed in consideration of a conveyance to him of part of the real estate devised. The truth is that in 1897 said Louis Beyer and the complainant herein, together with Elizabeth K. Maus, filed a caveat, which was dismissed for want of prosecution in February, 1899.

15. It is true that Elizabeth K. Maus executed a quitclaim to her daughter, defendant Helen B. Johnson, but she did so without consideration for the purpose of emphasizing her conviction that the will was and is valid.

16. It is true that Louis Beyer executed a deed of trust, as averred in paragraph 16 of the bill, and that the same was duly recorded as therein averred.

Further answering, this defendant says:

That on the 8th day of February, 1899, the complainant filed her caveat to said will in this court, sitting as an orphans' court, but she has never proceeded thereunder nor procured issues thereon,
25 and said caveat is still pending and undetermined.

Defendant further says that this court, sitting as an orphans' court, has exclusive jurisdiction to determine the validity of said will, if said complainant now has the right to litigate its validity, which defendant denies.

He further says that if complainant has any right to attack said will she also has her full and adequate remedy by an action of ejectment.

And this defendant claims the same benefit of this objection as if raised by plea or demurrer.

Defendant is advised and says that the complainant has not in and by her said bill made or stated any such case as entitles her to the relief sought, or to any relief in this court sitting in equity, and he claims the same benefit of this objection as if raised by demurrer.

Defendant submits the foregoing also as his response to the rule to show cause why a receiver should not be appointed, and claims that the said rule should be discharged.

LOUIS BEYER, JR.
LOUIS BEYER, JR., *Executor.*

JOHN RIDOUT,
Solicitor for Defendant.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated as of personal knowledge are true, and the facts therein stated on information and belief I believe to be true.

LOUIS BEYER, JR.

Subscribed and sworn to before me this 18th day of April,
26 A. D. 1899.

[SEAL.] N. CARROLL DOWNS,
Notary Public, D. C.

Answer of Defendant Helen B. Johnson and Response to Rule.

Filed Apr. 18, 1899.

In the Supreme Court of the District of Columbia.

CAROLINE LEFEVRE
vs.
LOUIS BEYER ET AL. } In Equity. No. 20324.

The defendant Helen B. Johnson, for answer to the bill of complaint herein, says:

1 to 6. She admits the allegations of paragraphs 1 to 6 of said bill.

7. She admits that said Mary Beyer at the time of her decease was about sixty-five years of age, and that her health had been somewhat impaired for some years prior thereto, but she denies that her mental health was impaired, either by physical weakness or by the administration to her of drugs or medicines; she denies that she was in anywise incapable of understanding the ordinary affairs of life or of knowing the value or extent of her estate or her rights in respect thereto. She says she knew exactly the relationship of those connected with her, and that she demonstrated her
27 capability to select the natural objects of her bounty by selecting as her principal legatees and devisees this defendant and Louis Beyer, Jr. She says that in the very early life of this defendant and said Louis Beyer, Jr., the said Mary Beyer adopted them as her children, took them to live with her and assumed the care of a mother over them; that she became devotedly attached to

them and they to her, and that the sisters of the said Mary Beyer were on very distant terms with her, rarely saw her, and in nowise ministered to her or showed any affection for her.

She denies that either prior to or at the time of executing the said will said Mary Beyer was incapable of executing a valid deed or contract.

She also denies that at any time prior to her death she was incapable of freely exercising her mental faculties.

8. She admits that on the 14th day of July, 1896, said Mary Beyer executed and published in due form of law the paper-writing of that date, which the defendant Louis Beyer, Jr., as executor named therein, propounded, and which has been admitted to probate and record by this court.

She denies that this defendant and Louis Beyer, Jr., procured the preparation of said will, but avers the fact to be that some time prior to the execution of said will said Mary Beyer sent for an attorney to prepare her will; that this attorney called in response to her request, and took her instructions from her; that he prepared a draft of the will and, at a second interview, submitted it to her, when she called attention to certain provisions which did not suit her. The said attorney then took the draft with him and
28 afterwards returned and, at a third interview, submitted the corrected paper, which she fully understood, approved, and duly published.

She denies that she in anywise induced said Mary Beyer to sign the said will. She denies that she was importuned by her to sign the same, and says she executed the paper voluntarily and because it expressed her intelligent volition in the premises.

9. She admits that by the said will devises and bequests are made as averred in paragraph 9 of the bill.

10. She denies that she concealed the contents of said will from said Louis Beyer, or that this defendant was unwilling that said Louis Beyer should be fully acquainted with its contents. She denies that she was party to any scheme to procure execution of said will, or that she made any effort to bring about the absence of said Louis Beyer when said will was executed.

11. She admits that Mary Beyer died July 26th, 1896.

12. She admits that said Mary Beyer's personalty was of trifling value, and says that as a result said Louis Beyer, Jr., has largely overpaid her estate, and she denies that her real estate was of any such value as is asserted by complainant, though she says its value is immaterial in this controversy, seeing that complainant has no interest in it.

29 13. She admits the allegations of paragraph 13 of said bill, except she says that said complainant was duly notified of the application to probate said will, and made no objection whatever.

14. She denies that said Louis Beyer soon after probate of said will filed a caveat thereto, which he afterwards dismissed, in consideration of a conveyance to him of part of the real estate devised.

The truth is that in 1897 said Louis Beyer and the complainant herein, together with Elizabeth K. Maus, filed a caveat, which was dismissed for want of prosecution in February, 1899.

15. It is true that Elizabeth K. Maus executed a quitclaim to her daughter, this defendant, but she did so without consideration for the purpose of emphasizing her conviction that the will was and is valid.

16. It is true that Louis Beyer executed a deed of trust as averred in paragraph 16 of the bill, and that the same was duly recorded as therein averred.

Further answering, this defendant says:

That on the 8th day of February, 1899, the complainant filed her caveat to said will in this court, sitting as an orphans' court, but she has never proceeded thereunder, nor procured issues thereon, and said caveat is still pending and undetermined.

Defendant further says that this court, sitting as an orphans' court, has exclusive jurisdiction to determine the validity of said will, if said complainant now has the right to litigate its validity, which defendant denies.

She further says that if complainant has any right to attack said will she also has her full and adequate remedy by an action of ejectment.

And this defendant claims the same benefit of this objection as if raised by plea or demurrer.

Defendant is advised and says that the complainant has not in and by her said bill made or stated any such case as entitles her to the relief sought or to any relief in this court sitting in equity, and she claims the same benefit of this objection as if raised by demurrer.

Defendant submits the foregoing also as her response to the rule to show cause why a receiver should not be appointed and claims that the said rule should be discharged.

HELEN B. JOHNSON.

JOHN RIDOUT,
Solicitor for Defendant.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated as of personal knowledge are true, and the facts therein stated on information and belief I believe to be true.

HELEN B. JOHNSON.

Subscribed and sworn to before me this 18th day of April, A. D. 1899.

N. CARROLL DOWNS,
[SEAL.] *Notary Public, D. C.*

31 *Answer of Defendants Myer Cohen and Adolph G. Wolf, Trustees.*

Filed Apr. 18, 1899.

In the Supreme Court of the District of Columbia.

CAROLINE LE FEVRE, Plaintiff,
vs.
LOUIS BEYER ET AL. } Equity. No. 20324.

The defendants Myer Cohen and Adolph G. Wolf, to so much of the plaintiff's bill of complaint as it is material for them to answer, answering they say.

They admit to be true the averments of the first and second paragraphs. They can neither admit nor deny the averments of the numbered paragraphs from the third to the fifteenth, both inclusive, but if the same shall be decreed material they will require strict proof thereof. They admit the averments of the sixteenth paragraph, but they deny that there was any pretended conveyance to Louis Beyer, Sr., so far as they are informed. They are informed and believe, and therefore aver, that the deed of trust to them by Louis Beyer, Sr., is a valid lien on said real estate.

Further answering, these defendants say that the complainant has not in and by her said bill made or stated any such case as entitles her to the relief sought or to any relief in this court sitting in equity, and they claim the same benefit of this objection as if raised by demurrer, and the defendants also submit the foregoing as their response to the rule to show cause why a receiver should not be appointed and claim that the rule should be discharged.

MYER COHEN.
ADOLPH G. WOLF.

32 I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and the facts therein stated of my own knowledge are true, and those stated on information and belief I believe to be true.

ADOLPH G. WOLF.

Subscribed and sworn to before me this 18th day of April, 1899.

J. R. YOUNG, *Clk*,
By R. J. MEIGS, JR., *Ass't Clk.*

Order Discharging Rule and Denying Motion for Injunction and Receiver.

Filed Apr. 18, 1899.

In the Supreme Court of the District of Columbia.

CAROLINE LEFEVRE
vs.
LOUIS BEYER ET AL. } Equity. 20324.

This cause coming on to be heard upon the rule to show cause passed herein on the 12th day of April, 1899, counsel on both sides having been heard, it is this 18th day of April, 1899, ordered that the said rule be discharged and the complainant's motion for a receiver and injunction is denied.

By the court:

CHAS. C. COLE,
Asso. Justice.

33 *Demurrer of Louis Beyer.*

Filed Apr. 24, 1899.

In the Supreme Court of the District of Columbia.

CAROLINE LE FEVRE
vs.
LOUIS BEYER ET AL. } In Equity. No. 20324.

The demurrer of Louis Beyer, one of the above-named defendants, to the bill of complaint.

The defendant Louis Beyer says that the complainant has not stated in her bill such a case as entitles her to any such discovery or relief as is sought for against this defendant; wherefore he demands the judgment of this court whether he shall make further answer to said bill, and prays to be hence dismissed with his costs.

FRANKLIN H. MACKEY,
Sol. for said Def't.

Louis Beyer, being duly sworn, deposes and says that he is the defendant named in the foregoing demurrer, and that the same is not interposed for delay.

LOUIS BEYER.

Subscribed and sworn to before me this 24th day of April, A. D. 1899.

J. R. YOUNG, *Clk*,
By R. J. MEIGS, JR., *Ass't Clk.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in law.

FRANKLIN H. MACKEY,
Sol. for Def't Louis Beyer.

34 *Memorandum.*

June 20, 1899.—Issues certified to the circuit court for trial by jury by consent.

Certificate of Jury's Findings.

Filed Jan. 17, 1900.

Supreme Court of the District of Columbia.

MONDAY, *December* 11, 1899.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

The following case was certified to criminal court No. 2, Justice Cole presiding:

CAROLINE LEFEVRE, Plaintiff, vs. LOUIS BEYER and LOUIS BEYER, JR., Executor; Helen B. Johnson, Meyer Cohen and Adolph G. Wolf, Trustees, Defendants.	Issues from Equity. At Law, No. 43492. Equity, No. 20324.

Come here again the parties aforesaid in manner aforesaid, and the same jury return into court and upon their oath say: In answer to the first issue: "First. Was the said Mary Beyer at the time of the alleged execution of the paper-writing bearing date the
35 14th day of July, A. D. 1896, and purporting to be her last will and testament, of sound and disposing mind, memory, and understanding and capable of executing a valid deed or contract?" they answer, Yes.

In answer to the second issue: "Second. Was the execution of said paper-writing bearing date the 14th day of July, 1896, and purporting to be the last will and testament of the said Mary Beyer, procured by fraud, circumvention, or undue influence practiced or exercised upon the said Mary Beyer by Louis Beyer, Jr., Helen B. Johnson, or by either of them, or by any other person?" they answer, Yes.

In answer to the third issue: "Third. Were the contents of the paper-writing bearing date July 14th, 1896, and purporting to be the last will and testament of said Mary Beyer, known to her at the time of the alleged execution thereof?" they answer, Yes.

And the court orders said answers certified to that branch of the court whence said issues came.

Petition for Receiver Pendente Lite.

Filed Jan. 18, 1900.

In the Supreme Court of the District of Columbia.

CAROLINE LE FEVRE
vs.
LOUIS BEYER, JR., ET AL. } Equity. No. 20324.

To the honorable justices of said court:

The petition of Caroline Le Fevre respectfully showeth as
36 follows:

That on April 7th, 1899, she exhibited her bill of complaint in this cause, wherein, among various other prayers, she asked that the last will and testament of Mary Beyer, late of Washington, D. C., might be declared not to have been her last will and testament and might be declared to be vacated, and that pending the litigation of the various facts and issues in this proceedings a receiver might be appointed to take charge of her real estate and collect the rents and profits arising thereout.

2. Your petitioner further represents that the issues to be tried by the jury as to validity of said last will and testament of said Mary Beyer, deceased, were framed and sent by this honorable court to try the fact of the validity of said last will and testament; which issues have been duly tried by a jury and a certificate of the proceedings thereunder has been returned to this honorable court, the findings of said jury having been that the said last paper-writing purporting to be the last will and testament of the said Mary Beyer, deceased, was procured by the undue influence, fraud, and circumvention of certain defendants in this proceedings mentioned.

3. Your petitioner further shows that the said Mary Beyer departed this life on the 26th day of July, 1896, and that from that time up to the filing of this petition no account has ever been made of the rents, issues, and profits of the real estate of which she died seized, which your petitioner avers to amount now in the aggregate to the sum of about four thousand ($4,000) dollars.

4. Your petitioner further shows to the court that the
37 monthly rental of certain of said real estate amounts to about sixty-five ($65) dollars per month, which has been since the death of said Mary Beyer collected by Louis Beyer, Sr., while the rent of other of said real estate, the actual rental of which is to this petitioner unknown, has been collected by Louis Beyer, Jr., and Helen B. Johnson, and this petitioner alleges that the reasonable rental value of said last-mentioned real estate is not less than thirty-five ($35) dollars per month.

Your petitioner therefore prays that an order may be passed by this honorable court appointing a receiver *pendente lite* to take charge of the real estate in these proceedings mentioned and hereafter to

collect the rents, issues, and profits thereof and to manage the same, and that the receiver so appointed may have authority to ask, demand, sue for, recover, and receive the rents, issues, and profits so, as aforesaid, hereto- collected by the said Louis Beyer, Sr., and the said Louis Beyer, Jr., or Helen B. Johnson or either of them, and to bring the money into this court for the further order thereof which the said receiver may so collect or receive.

CLAYTON E. EMIG,
Solicitor for Complainant.

DISTRICT OF COLUMBIA, *ss:*

Clayton E. Emig upon oath says that he has read the foregoing bill of complaint by him subscribed and knows the contents thereof; that the facts therein stated upon his personal knowledge are true and those stated upon information and belief he believes to be true.

CLAYTON E. EMIG,
Solicitor for Comp.

Subscribed and sworn to before me this 18th day of Jan.,
38 1900.

J. R. YOUNG, *Clerk,*
By L. P. WILLIAMS, *Ass't Clerk.*

Rule to Show Cause.

Filed Jan. 18, 1900.

In the Supreme Court of the District of Columbia.

LE FEVRE
vs.
BEYER ET AL. } Equity. No. 20324.

Ordered by the court this 18th day of January, 1900, upon the petition filed herein, that a receiver *pendente lite* be appointed, unless cause be shown to the contrary thereof, on or before the 26th day of January, A. D. 1900, provided that a copy of this order be served upon the defendants or their solicitors on or before the 20th day of January, A. D. 1900.

JOB BARNARD, *Justice.*

Service of copy this 18th January, 1900, is hereby acknowledged.

JNO. RIDOUT,
For Louis Beyer, Jr.
HELEN B. JOHNSON.

39 *Demurrer to Petition and Rule to Show Cause.*

Filed Jan. 26, 1900.

In the Supreme Court of the District of Columbia.

LE FEVRE
vs.
BYER ET AL. } In Equity. No. 20324.

The defendant Louis Beyer, Sr., for answer to the rule to show cause why a receiver should not be appointed of the property involved in this cause, says that there is no rule of equity procedure or practice which entitles the complainant, under the facts stated in her petition and in her bill of complaint, to the appointment of a receiver herein.

FRANKLIN H. MACKEY,
Sol. for Byer, Sr.

Affidavit and certificate waived.

CHAS. POE,
For Compl't.

Answer of Louis Beyer, Jr., to Rule to Show Cause.

Filed Jan. 26, 1900.

In the Supreme Court of the District of Columbia.

CAROLINE LEFEVRE
vs.
LOUIS BEYER, SENIOR, ET AL. } In Equity. No. 20324.

40 The respondent Louis Beyer, Jr., for cause why a receiver should not be appointed in this cause, says:

He admits that on the issues transmitted for trial by jury a verdict has been rendered as stated in the complainant's petition, but he is advised and avers that said verdict is merely advisory and not binding upon the court, even if it has jurisdiction to hear and determine this cause, which he denies.

At the time of the death of the said Mary Beyer this respondent and Helen B. Johnson were living with said Mary Beyer in the dwelling-house on the Brightwood Avenue front of the property described in the bill.

This respondent remained there until May, 1897, when he removed from the premises and remained away until August, 1897, when he returned and remained until December 15th, 1897, when he removed from the premises and did not afterwards return.

This respondent has never collected any rental from said premises.

Said Caroline Lefevre has never, before this suit was brought,

claimed any right to the use or occupation of said premises nor the right to collect rent therefor, and this respondent has never refused to permit her to use and occupy the said premises.

This respondent denies that the rental value of the real estate of which said Mary Beyer died seized since her death amounts to $4,000.

The rental of the part of said premises fronting on 8th street has been collected by Louis Beyer, Senior, and this respondent
41 has never collected any rent therefrom.

The rental value of the house fronting on Brightwood avenue is not more than $25.00 per month.

This respondent is not only a devisee, but an heir-at-law, of said Mary Beyer, and as such heir-at-law would be a tenant in common with said Caroline Lefevre, and as such entitled to the use and occupation of said real estate, and this respondent denies that he is in anywise liable to said Lefevre for use and occupation of any part of the said real estate.

This respondent further says that neither the petition filed herein January 18th, 1900, nor the record in this cause shows any cause why a receiver should be appointed, and he claims the same advantage of this objection as if raised by demurrer.

This respondent makes his answer to the bill in this cause part of this response to the rule to show cause as fully as if said answer were herein repeated.

He further says that an application for a receiver in this cause was heretofore made by said complainant and was refused, and that the complainant is concluded thereby, and he submits that the rule should be discharged and the application for a receiver refused.

This respondent, not admitting, but denying, his liability for any rent of said premises, further says that he has expended for taxes, insurance, and repairs upon said property the sum of $426.51, and that, as executor under said will, he has overpaid the estate
42 the sum of about $250, to the benefit of which payments he is entitled as against said complainant.

This respondent further submits that no order for a receiver can be made in this cause, because Helen J. Fenton and the heirs-at-law of Elizabeth K. Maus, deceased, are not parties to the cause, they being other heirs-at-law of said Mary Beyer.

LOUIS BEYER, JR.

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated as of personal knowledge are true, and the facts therein stated on information and belief I believe to be true.

LOUIS BEYER, JR.

Subscribed and sworn to before me this 25th day of January, A. D. 1900.

HARRY M. PACKARD,
Notary Public, D. C.

[SEAL.]

43 *Answer of Helen B. Johnson to Rule to Show Cause.*

Filed Jan. 26, 1900.

In the Supreme Court of the District of Columbia.

CAROLINE LEFEVRE
vs.
LOUIS BEYER, SENIOR, ET AL. } In Equity. No. 20324.

The respondent Helen B. Johnson, for cause why a receiver should not be appointed in this cause, says:

She admits that on the issues transmitted for trial by jury a verdict has been rendered, as stated in the complainant's petition, but she is advised and avers that said verdict is merely advisory and not binding upon the court, even if it has jurisdiction to hear and determine this cause, which she denies.

At the time of the death of the said Mary Beyer this respondent and Louis Beyer, Jr., were living with said Mary Beyer in the dwelling-house on the Brightwood Avenue front of the property described in the bill.

This respondent remained there until May, 1897, when she removed from the premises and remained away until August, 1897, when she returned, and has since remained.

This respondent has never collected any rental from said premises. Said Caroline Lefevre has never before this suit was brought claimed any right to the use or occupation of said premises nor the right to collect rent therefor, and this respondent has never refused to permit her to use and occupy the said premises.

44 This respondent denies that the rental value of the real estate of which said Mary Beyer died seized since her death amounts to $4,000.

The rental of the part of said premises fronting on 8th street has been collected by Louis Beyer, Sr., and this respondent has never collected any rent therefrom.

The rental value of the house fronting on Brightwood avenue is not more than $25 per month.

This respondent is not only a devisee, but her mother, Elizabeth K. Maus, deceased, was an heir-at-law of said Mary Beyer. Said Elizabeth K. Maus died on the tenth day of June, 1899, leaving this respondent, Kate Adams, Carrie Maus, daughters, and Louis Maus, a son, her only heirs-at-law, and also leaving surviving her husband, John Maus. This respondent's occupancy of part of said premises has always been with the assent of her said mother and her heirs, as such heir-at-law, said Elizabeth K. Maus, during her life, and after her death her heirs would be tenants in common with said Caroline Lefevre and as such entitled to the use and occupation of said real estate; and this respondent denies that she is in anywise liable to said Lefevre for use and occupation for any part of the said real estate. This respondent is the wife of Atlee Johnson, with whom

she has occupied the said premises, but never to the exclusion of said Caroline Lefevre.

This respondent further says that neither the petition, filed herein January 18th, 1900, nor the record in this cause shows any cause why a receiver should be appointed, and she claims the same advantage of this objection as if raised by demurrer.

This respondent makes her answer to the bill in this cause
45 part of this response to the rule to show cause as fully as if the said answer were herein repeated.

She further says that an application for a receiver in this cause was heretofore made by said complainant and was refused, and that the complainant is concluded thereby, and she submits that the rule should be discharged and the application for a receiver refused.

This respondent further submits that no order for a receiver can be made in this cause, because Helen J. Fenton, an heir-at-law of said deceased, and the heirs-at-law of Elizabeth K. Maus, deceased, are not parties to the cause.

HELEN B. JOHNSON.

I do solemnly swear that I have read the foregoing answer by me subscribed, and know the contents thereof; that the facts therein stated as of personal knowledge are true, and the facts therein stated on information and belief I believe to be true.

HELEN B. JOHNSON.

Subscribed and sworn to before me this 25th day of January, A. D. 1900.

THEODORE L. BAKER.
[SEAL.] *Notary Public, D. C.*

46 *Petition to Make New Party Defendant and Order Granting Same.*

Filed Jan. 30, 1900.

In the Supreme Court of the District of Columbia.

LE FEVRE vs. BEYER. } Equity. No. 20324.

To the honorable judges of the supreme court of the District of Columbia, holding an equity court:

The petition of Caroline Le Fevre, complainant in the above cause, respectfully shows that Helen B. Fenton, a niece, heir-at-law, distributee, and one of the next of kin of Mary Beyer, late of the city of Washington, District of Columbia, deceased, is a proper and necessary party defendant to these proceedings, but that she has heretofore not been made a party hereto.

Your petitioner therefore prays your honors to pass an order making the said Helen B. Fenton a party defendant herein, and au-

thorizing process to issue against her according to the course of the court directing her to be and appear in this court on some certain day to be therein named to make answer (but not under oath, answer under oath being hereby expressly waived) to the bill of complaint hereinbefore in this cause exhibited, and to abide by and perform such order or decree as may be therein passed; and, as in duty, &c.

CHAS. POE,
Sol'r for Compl't.

47 Ordered by the court this 30 day of Jan'y, 1900, upon the foregoing petition filed in this cause, that Helen B. Fenton be, and she hereby is, made a party defendant herein, and that process issue against her as prayed.

JOB BARNARD, *Justice.*

Order Denying Application for Receiver.

Filed Jan. 30, 1900.

In the Supreme Court of the District of Columbia.

CAROLINE LE FEVRE
vs.
LOUIS BEYER ET AL. } No. 20324. Eq.

This cause coming on for hearing on the petition of the complainant for the appointment of a receiver herein *pendente lite*, filed January 18, 1900, and being heard, argued by counsel for the respective parties, and considered, it is this 30th day of January, 1900, ordered that said application be, and the same is hereby, denied.

JOB BARNARD, *Justice.*

48 *Stipulation of Parties as to Testimony, &c.*

Filed Mar. 8, 1900.

In the Supreme Court of the District of Columbia.

LE FEVRE
vs.
BEYER ET AL. } In Equity. No. 20324. Law. No. 43492.

On issues from the equity court—Levre *v.* Beyer.

It is hereby stipulated by and between the parties to this cause that the stenographic report of the testimony and proceedings had on the trial of the above-stated issues before Mr. Justice Cole and a jury and reported by R. S. Boswell, as appears by his affidavit annexed to said report dated the 26th of February, 1900, may, together with the motions for a new trial made by the respective parties and the order of the court made in this matter, appearing in Minutes 40,

page 176, of the records of the court, and also any other and all orders and proceedings passed or had herein, be produced, read, and referred to and considered by the court as part of the record on the hearing in the equity court of this case and in any appellate court to which said cause may be carried by either or any of the parties, and that either or any of the parties may at any time produce and have incorporated into the transcript on appeal to said appellate courts copies of any of the foregoing testimony, proceedings, and orders.

CHAS. POE,
CLAYTON E. EMIG,
Of Counsel for Complainant.
FRANKLIN H. MACKEY,
For Louis Beyer, Sr.
JOHN RIDOUT,
For Louis Beyer, Jr., and Helen B. Johnson.
MYER COHEN AND
ADOLPH G. WOLF, *Trustees,*
By ADOLPH G. WOLF.

HENRY E. DAVIS,
For Louis Beyer, Sr.

49 *Testimony and Proceedings Referred to in Preceding Stipulation.*

Filed Mar. 8, 1900.

In the Supreme Court of the District of Columbia.

In re Estate of MARY BEYER, Deceased.

WASHINGTON, D. C., *December* 6, 1899.

The court met pursuant to adjournment.

Appearances: Charles Poe, Esq., and Victor H. Wallace, Esq., on behalf of the caveators; John Ridout, Esq., and Franklin H. Mackey, Esq., on behalf of the caveatees.

Mr. RIDOUT: As these issues are framed, it would seem that we have the affirmative.

The COURT: Is the execution of the paper admitted?

Mr. RIDOUT: It is not admitted.

Mr. POE: There is no doubt as to the execution of the paper.

The COURT: Where there is no question as to the execution of the paper, when the execution of it is admitted without proof, my recollection is that the presumption arises that the party had knowledge of its contents. That is the law, if I understand it. I have given it to the jury that way.

Mr. POE: It was settled a hundred years ago.

The COURT: In a given case it might be different. Take an illiterate person who is unable to read and write, and a court in such a case as that—that it was incumbent upon the caveatees—

50 that the mere proof of the execution of the paper would not be sufficient to raise a presumption of the knowledge of its

contents. If the question of illiteracy does not enter into it, I should say the law of this jurisdiction is—that is, the Maryland rule—that where the execution of a will is admitted or is proved the presumption arises that the person executing it had knowledge of its contents, and any person contending to the contrary would have the burden upon him to prove to the contrary. Make an order having Caroline Le Fevre the complainant and Louis Beyer *et al.* the defendants in the trial of these issues.

Mr. MACKAY: To make up the record in this case your honor will allow us an exception to that?

The COURT: Certainly.

Mr. Poe having made an opening statement on behalf of the caveators, followed by Mr. Ridout, on behalf of the caveatees, the examination of witnesses was proceeded with as follows:

LOUISE H. STONE, a witness on behalf of the caveators, having been first duly sworn, testified as follows:

By Mr. POE:

Q. State your name to his honor and the gentlemen of the jury. A. Louise H. Stone.

Q. What relation are you to Caroline Le Fevre? A. Daughter.

Q. She is the complainant in this suit; and you are what relation to the late Mary Beyer? A. Niece.

51 Q. Is your father living? A. Yes, sir.

Q. What is his name? A. Charles Le Fevre.

Q. Where do you reside? A. Brookland, D. C.

Q. Of course, you knew your aunt and uncle, Mary Beyer and Louis Beyer, Sr.? A. Yes, sir.

Q. Do you know how long they were married? A. Forty-five years.

Mr. RIDOUT: The witness cannot possibly know that.

Mr. POE: It is a matter of reputation in the family.

The COURT: It is a question whether that is the fact that can be proven by family reputation.

Mr. POE: I do not care for it.

The COURT: There might be some question. Let it go out.

Mr. POE: Yes; let it go out. (To the witness:) Do you remember seeing your aunt in July, 1896? A. Yes, sir.

Q. Whereabouts was it that you first saw her? A. On Brightwood avenue.

Q. Number what, Brightwood avenue? A. I do not exactly know the number.

Q. It was her house, was it? A. Yes, sir.

Q. When had you seen her last before that? A. She had gone away just before she was taken to her bed.

52 Q. How long before July was that—how many weeks? A. I guess just a month.

Q. Whereabouts did you see her at that time? A. She was out to our home—out to see my mother.

Q. Came out to see your mother? A. Yes, sir.

Q. Where was your mother then? A. She was at our home, where we are now.

Q. What part of the house was she in? A. Downstairs in the dining-room.

Q. What was your mother's condition of health at that time? A. She was very ill.

Q. State whether Mrs. Beyer made any statement on that occasion as to the object of her visit.

Mr. RIDOUT: We submit that that is not competent to bind us in any way.

The COURT: Statement about what? I did not catch your full question.

Mr. POE: The statements of the testatrix in relation to her affection for her own sister.

The COURT: If it relate to that, I think it is competent.

Exception noted.

The WITNESS: She was to have gone away for her health, but mother was so bad she did not care about going—did not care about leaving her.

By Mr. POE:

Q. You say that was about a month before you saw Mrs.
53 Mary Beyer at your house? A. At my house.

Q. About a month? A. Yes, sir.

Q. Did she go away? A. Yes, sir; she went.

Q. How long did she stay away? A. She could not have been gone long. She was brought back sick herself.

Q. You saw her again about what time in July? A. Just 14 days before she died.

Q. Where was she then? A. She was in bed.

Q. State all that occurred on that day and occasion. A. I went up to see her, and I afterward came down, and we had an early supper, and Mr. Johnson took us down to the White lot.

Q. What occurred when you were there? Did you see your aunt? A. Yes, sir; I saw my aunt.

Q. State where she was on this day. A. She was in bed, and all she said to me was, "Give my love to your mother and father and sister."

Q. And that was all she said that day. What was her physical condition? A. Very weak.

Mr. RIDOUT: How can this witness answer a question of that sort?

The COURT: She is not going into a diagnosis of the case. She can state whether the testatrix was very ill or only slightly ill.

The WITNESS: She was very ill.

54 By Mr. POE:

Q. When was it that you saw her again? A. After that I went up every other day.

Q. Until when? A. Until she died.

Q. Did you see her on these occasions? A. Certainly I saw her then.

Q. Do you know whether she recognized you or not? A. She did not seem to recognize any one.

Mr. RIDOUT: That is not in answer to the question that is asked. We think that ought to be stricken out.

The COURT: I think that is an answer to the question and a little more. I think that is all right.

Mr. RIDOUT: That is exactly what we object to.

By Mr. POE:

Q. Did she recognize you? A. She did not seem to recognize anybody.

Q. Just state what she did. Did she do anything? Could she move about in her bed? A. No, sir; she could not.

Q. She could not move about in her bed? A. No, sir.

Q. Could she move her head? A. Just about move her head a little from one side to the other.

Q. What hour of the day was this that you were there the first time in July? A. It was toward evening; about two or three o'clock, I think.

55 Q. How did you happen to go away from there on that day? A. The Christian Endeavor was here, and Mr. Johnson drove me down to the grounds before he took me home.

Q. Who was Mr. Johnson? A. Mrs. Helen Johnson's husband.

Q. Did you see anybody else there on that occasion except Mrs. Johnson and your aunt? A. The people about the house—Mrs. Johnson's mother-in-law and a lady from Baltimore.

Q. Where were all of them? A. They were all in the house.

Q. What part of the house? A. I think the mother-in-law was up in the room, but the other lady, I think she was around the house somewhere.

Q. Did you ever hear any conversations between Mrs. Johnson and your aunt with reference to your aunt making a will?

The COURT: You mean Mrs. Beyer?

Mr. POE: Mrs. Beyer, her aunt.

The COURT: You said Mrs. Johnson and her aunt.

(By Mr. POE:)

Q. Your aunt, Mrs. Beyer, I mean, and Mrs. Johnson in reference to making a will? A. No; but I have heard my aunt say often that she would never make a will.

Q. When was it that you heard that? A. I boarded in the house for a couple of years, and I suppose in that time I heard it three or

four different times when we had little disputes, and she said that was the cause of it.

Q. What was the cause of it? A. That Mrs. Johnson——

By Mr. RIDOUT:

56 Q. Whom do you mean by she? A. If anything displeased her my aunt always said it was because she did not make a will, and she never intended to make a will.

Q. If anything displeased whom? A. Mrs. Johnson.

By Mr. POE:

Q. Did you ever have any conversation with your uncle, Louis Beyer, Sr., after your aunt's death with reference to her will?

Mr. RIDOUT: One moment. So far as the client I represent is concerned, that cannot bind us.

Mr. POE: He is a party to the record, first party to the record. We want to prove admissions by him. I want to offer in evidence a caveat which he filed to this very will.

Mr. RIDOUT: I want the record to show very clearly that while there are three caveatees they will necessarily fall into the proofs. Now, any statements made by Louis Beyer, Sr., without going down to the question as to what they may be valuable for, so far as he is concerned, they cannot have any efficacy as to the parties to this proceeding.

Mr. POE: They are all privies by estate. If this will fall they will have no interest.

The COURT: There is no question about Louis Beyer, Sr., being a party here; the question is whether it can be considered by the jury against anybody but him.

Mr. RIDOUT: That is the question.

The COURT: Upon that I think the authorities are not very
57 harmonious. I will admit it, and then, further along in the case, I will instruct the jury whether Louis Beyer Sr.'s declarations are to be taken against the others. It does not make any difference about the admissibility when it was.

Mr. MACKEY: In order that we might contradict, the witness must fix the time.

The COURT: Upon cross-examination you can get the witness down to the time. Whether he ask- her as to the time does not affect the admissibility. He said after the death of the testatrix.

Mr. RIDOUT: We reserve an exception to your honor's ruling.

Mr. WOLF: We reserve an exception, too.

The WITNESS: Yes, sir; he came to our home, and he wanted my mother and the sister in Philadelphia to help him break this will. He said that they were not treating him right.

By Mr. POE:

Q. What did he say they had done to him? A. They had taken his clothes and trunks and set them out in front of the lady's house he was to marry the next day.

Mr. MACKEY: We move that that be stricken out. The witness is asked the question whether she ever heard Louis Beyer, Sr., make any statement about this will. Now, it appears that he went out and asked the witness' mother if she would help him break the will because these persons had put his clothes out on the street.

The COURT: I think it is competent against Louis Beyer, Sr., at all events, and will let it stand.

By Mr. POE:

Q. What did you and Louis Beyer, Sr., and Mrs. Maus do
58 in reference to preparing an attack upon this will and when?

Mr. RIDOUT: To save time——

The COURT: I have some doubt as to whether that is a proper question. What he did—what he said I have no doubt is evidence against him. But not what they did.

Mr. POE: I will withdraw that question. (To the witness:) On what ground did he state that he was going to attack the will?

Mr. RIDOUT: We object to that.

The COURT: I think that is competent.

The WITNESS: Because they were not treating him right.

By Mr. POE:

Q. Did he say anything in reference to Mrs. Mary Beyer's mental capacity?

Mr. MACKEY: We object to that as leading.

The COURT: I think he is permitted to ask the question generally.

Mr. MACKEY: Your honor will give us an exception.

The COURT: Yes.

(By Mr. POE:)

Q. Just answer the question. What did he say about your aunt Mary's capacity? A. He said he did not think she was fit to make a will.

Q. Did he give any reasons why she was not fit to make a will?

Mr. RIDOUT: Is that competent?

The COURT: Yes; I think that is competent.

Mr. RIDOUT: It all comes in under our exception.

The COURT: Yes.

59 The WITNESS: He thought she was too ill and did not know anything about what she was doing.

Cross-examination.

By Mr. MACKEY:

Q. How long have you been living in the District of Columbia? A. All my life. I was born at the Park hotel.

Q. You lived with your mother and father? A. We were all together at that time.

Q. Since your marriage also? A. Yes; I have lived there since my marriage.

Q. And before, and are still living with your mother, Mrs. Le Fevre? A. Yes, sir.

Q. You say that Mrs. Beyer on one occasion called at your mother's house? A. Yes, sir.

Q. Where was Mrs. Beyer living then? A. The Brightwood house.

Q. How far was that from your house? A. We are in Brookland.

Q. And they were living in Brightwood? A. Yes, sir.

Q. Do you know how Mrs. Beyer got to your house? Did she walk out? A. No, sir; she came out in a carriage.

Q. With whom? A. With Mrs. Johnson and her husband.

Q. Was it Mrs. Johnson's carriage that she came in or her
60 own? A. No; it was Mr. Louis', the young man.

Q. Louis Beyer's carriage, the young man—that is, Mrs. Beyer's adopted son? A. I never knew that he was adopted.

Q. Louis Beyer had taken Mrs. Beyer's name? A. After her death, so I understood. He never told it before.

Q. You do not know whether he had the name before Mrs. Beyer's death or not? A. He had the name, but he was not adopted.

Q. That is, you do not know anything about it? A. No, sir.

Q. Mrs. Beyer came out there in Louis Beyer's carriage to see your mother? A. Yes, sir.

Q. Was your mother up and about the house? A. She was sitting up, because she is not able to go to bed. She has to sit up. She cannot go to bed, but has to sit up in a chair.

Q. She was sick? A. Very ill.

Q. How long had your mother been sick? A. For a long time. I do not know exactly. She is sick yet. It has been more than six years.

Q. There was a pleasant greeting? A. Yes, sir.

Q. At that conversation, what did Mrs. Le Fevre say to your mother? Do you remember what she said? A. I do not know exactly what she said. They were both ill and they were both trying to console each other.

61 Q. You were in the room? A. Yes, sir.

Q. And they tried to be as pleasant to each other as possible? A. Yes, sir.

Q. You say you cannot remember what Mrs. LeFevre said to your mother? A. No, sir; I do not. I think she did say tell her sister that she ought to go away, that it might do her good.

Q. Do what? A. Go away. She intended to go to Richmond, and she told her to do it, that it would do her good.

Q. Mrs. Le Fevre told Mrs. Beyer to go to Richmond for her health? A. Yes, sir.

Q. What did Mrs. Beyer say to that? A. She did not think she would go, because my mother was so very ill; but after she got home the others thought it best——

Q. Never mind about that. That was substantially all the con-

versation that was had there? A. I do not know all that passed between them any more.

Q. That was all you heard, at any event? A. Yes, sir.

Q. What else occurred between them you are not able to say? A. No, sir. If called to my attention, I might remember it.

Q. How long did Mrs. Beyer stay there? A. I do not think she was away—I do not remember, but I do not think she was away more than a week.

62 Q. I mean on this visit that Mrs. Beyer made to your mother? A. She generally stayed about a couple of hours. She never came until after our dinner and she had not long to stay.

Q. On this occasion how long did she stay? A. I think about that time.

Q. About a couple of hours? A. Yes.

Q. And then she went back with Louis Beyer? A. With Mrs. Johnson.

Q. In the carriage? A. Yes, sir.

Q. And they parted pleasantly? A. Yes, sir.

Q. When did you next see Mrs. Beyer? A. Fourteen days before she died.

Q. Did you have any conversation with her? A. The only thing she said to me was to give her love to mother, father, and sister.

Q. You went into the room? A. Yes, sir.

Q. Who were in the room? A. Mrs. Johnson's mother-in-law. Mrs. Johnson might have been there; I do not know.

Q. This is the lady of whom you spoke as being from Baltimore? A. No; she is from Richmond. That is where Mrs. Beyer went.

Q. Mrs. Beyer went to Richmond? A. Yes, sir.

63 Q. And then came back from Richmond, and it was after that that you saw her. Right here, let us get the length of time that it was before you saw her the second time. You spoke of her coming to your mother's house in a carriage. When was that? A. I do not think it was more than a month before she died, because I do not think she was away more than a week before they had to bring her back.

Q. I thought you said she was away two weeks? A. She might have been, but I did not say so.

Q. And they brought her back from Richmond? A. Yes, sir.

Q. And you saw her when? A. Fourteen days before she died.

Q. She died on the 26th? A. Yes, sir.

Q. Then you saw her about a week or ten days after that visit—after she visited you or your mother. Is that correct? A. That is what I think. I do not know whether she was away two weeks.

Q. You saw her as soon as she came back? A. No, sir; not as soon. She was home almost a week before we heard she was home.

Q. And then you went over there? A. Yes, sir.

Q. You heard she was sick and you went in the room? A. Yes, sir.

Q. Did she greet you? A. She could not; she was too sick.

Q. She was in bed? A. Yes, sir.

64 Q. You went up and spoke to her? A. Yes, sir.

Q. And she asked how your mother was? A. No; she said give my love to mother and the other sister.

Q. That is all she said? A. That is all she said.

Q. Did you say anything more to her? A. No, sir; it was no use.

Q. Then what did you do? Did you go out of the room? A. Yes, sir; I went out of the room. I stayed there a few minutes and then went out.

Q. You were in the room only a few minutes? A. A very short time.

Q. Did you see this lady from Baltimore there? A. Yes, sir.

Q. What was her name? A. Mrs. Johnson's aunt, Mrs. Boss.

Q. Anybody else in this room beside this lady and you? A. I think Mrs. Johnson was in there.

By Mr. POE:

Q. You mean Mrs. Helen Johnson? A. She may have been there.

By Mr. MACKEY:

Q. You are not certain whether she was there or not? A. No, sir; not certain.

Q. Anybody else? A. Her mother-in-law might have been there.

Q. Whose mother-in-law? A. Mrs. Johnson's—the lady from Richmond.

65 Q. What was her name? A. I think her name was Mrs. Atley Johnson.

Q. You are not sure whether she was there? Did you say you are sure the lady from Baltimore was there? A. Yes, sir; I am pretty sure they were in the room.

Q. Are you sure that Mrs. Helen Johnson was there? A. I think she was in the room.

Q. You think. Are you willing to swear positively to the fact that she was there? A. I could almost do it, because she was generally in the room when I went there.

Q. Your recollection of being there is vague, however, is it not? A. Yes, sir.

Q. And the facts and circumstances that occurred there you cannot relate with any degree of certainty?

Mr. POE: I object.

The COURT: Let her answer that question.

The WITNESS: I am almost certain of it.

By Mr. MACKEY:

Q. But still there is a vagueness in your memory in regard to it? A. I do not think there is.

Q. Have you not just said that? A. I am almost positive that

Mrs. Johnson and all of them were in the room every time I went there—in and out of the room all of the time.

Q. You are not positive, then, that they were there—you are not absolutely positive that they were there? A. They must have been. I cannot say positively that they were there.

66 Q. You say you heard your uncle, Louis Beyer, Sr., say something. When was that? A. My aunt——

Q. Louis Beyer, Sr., the old gentleman, the husband of this lady who died. You say you heard him say something about wanting the will broken? A. Yes; he came on to see us.

Q. How long was that after the death of Mrs. Beyer? A. I cannot remember dates. I do not remember the date.

Q. I do not want the date. Can you not tell us about how long it was?

The COURT: Whether it was a month, a few months, a year, or less. That is what counsel wants.

(By Mr. MACKEY:)

Q. I do not want the date; I want to know about how long it was after the death of Mrs. Beyer that you heard this conversation, A. I do not know whether it was a month or two after that. I cannot say.

Q. Was it a month after? A. A month and more.

Q. Was it two months? A. I could not say positively.

Q. Would you say it was three months afterward? A. I could not say.

Q. Would you say it was four months afterward? A. I cannot answer. I do not know.

Q. Could you say it was six months after Mrs. Beyer's death that you heard Louis Beyer, Sr., say this? A. No, sir; I cannot.

67 Q. Would you venture to say it was eight months after her death? A. I really cannot answer.

Q. So that you really do not know whether it was eight months or a year? A. It was not a year.

Q. But you do not know whether it was a month or eight months after her death? A. No, sir.

Q. He came out there. Whom did he see? A. My mother. He saw us all. We were all there—father and mother and I.

Q. Where in the house did this conversation occur? In the parlor? A. In the dining-room.

Q. You were there? A. Yes, sir.

Q. And your mother? A. Yes, sir.

Q. And father? A. Yes, sir.

Q. You passed the greetings of the day, of course. How long had Mr. Beyer been there before he made this proposition of which you spoke? A. He just came out for that purpose and he went to talking about it.

Q. He told them what had been done to him. What did he say had been done to him? A. He said he was not treated right.

68 Q. By whom? A. By Mrs. Johnson and Mr. Beyer, both.

Q. He was then living with them, was he not? A. Yes, sir.

Q. In what respect did he say he was not treated aright? A. He said he did not have any home there at all; he had no home.

Q. He did not mean that they had kicked him out of the house, did he? A. He did not say that then, but he did later.

Q. He did not say then that he had been put out of the house at all? A. I think it was a very short time after that that he came out and said his clothes and everything had been put out.

Q. I am not speaking of this occasion. Did Mr. Beyer appear to have his feelings soured? Was he cool and calm in talking to you about this or was he rather in a passion and vexed? A. I do not think he was in a passion, because he came out three Sundays in succession and took dinner with us and talked each time on that subject.

Q. He said that Mrs. Helen Johnson and Mr. Beyer, Jr., these adopted children, or these people who have been called adopted children of Mr. Beyer, Sr., had not treated him aright, and he was going to break the will. Is that the substance of what he said? A. Yes, sir; he said he wanted her sisters, rather, to get what was belonging to them.

Q. He wanted what? A. Justice done.

Q. He wanted Mrs. Le Fevre to get what was coming to
69 her or what he thought she ought to have? A. Yes, sir.

Q. You said he stated that they had put his clothes out on the street? A. That is what he told us, that his clothes had been set out in front of the house of the lady whom he afterward married.

Q. Did he appear to be mad about that? A. He did not like it. It could not have been anything else but unpleasant.

Q. He was mad, and so expressed himself, indignant about it? A. Yes, sir.

Q. And he had the manner of an indignant man at the time? A. Of course, if he was acting so he had the manner of it.

Q. Did Mr. Beyer, Sr., say anything else? A. I do not know that he only talked on that subject.

Q. What did you folks say to him in reply to that? A. We never thought that our aunt had made such a will in the first place.

Q. I do not care what you thought, but what did Mrs. Le Fevre, your mother, say about it? A. She told him that she would help him out.

Q. Did you ever hear your mother say that she never thought that Mrs. Beyer made that will? A. She said she never thought that Mrs. Beyer would leave her that way; that she herself had never done anything that way.

70 Q. And she expressed her dissatisfaction with the will? A. Yes, sir; expressed dissatisfaction.

Q. Did not like the way the will was made and did not think Mrs. Beyer ought to have made such a will? A. Yes, sir.

By Mr. RIDOUT:

Q. On the occasion when you made the visit on Sunday, the 14th of July, I understand you to testify that you are positive Mrs. Johnson's mother-in-law and Mrs. Boss were at Mrs. Beyer's house? A. I think Mrs. Johnson came that very day.

Q. You mean Mrs. Helen B. Johnson's mother-in-law. A. Yes, sir.

Q. How about Mrs. Boss? A. I think she was there.

Q. You are not positive, however; you will not say positively? A. No, sir.

Q. Was Mrs. Boss engaged there as a nurse? When did she come? A. So they say.

Q. You were there every other day, I understood you to observe? A. She was there.

Q. She was apparently discharging the duties of nurse, was she not? A. Yes, sir.

Q. At that time she was attending to the housekeeping? A. I suppose Mrs. Johnson was.

Q. Young Mrs. Johnson? Mrs. Beyer was in a condition,
71 as you say, when she needed nursing? A. Yes, sir.

Q. On the occasion of your visit on that Sunday, do you remember whether you took tea or not? A. I took supper there.

Q. About what time in the afternoon was that? A. We got an early supper, because we were to be taken out riding. I was taken down to the Christian Endeavor encampment.

Q. You wanted to go down? A. I was asked if I wanted to go.

Q. You wanted to go? A. After I was asked.

Q. It was a custom of Mrs. Johnson to take you home in the dayton? A. It was customary.

Q. And on this occasion he took you home ultimately? A. Yes, sir; when we went around to the grounds.

Q. Who else went around with you? A. Mr. Johnson's children.

Q. You drove down to see the Christian Endeavor encampment, and then went home? A. Yes, sir.

Q. About what time did you leave the house to go to the encampment? A. I do not know exactly. It might have been three or four o'clock—somewhere along there.

Q. You have spoken of some statements made by Mrs. Beyer to the effect that she did not intend to make a will. Were any such statements ever made in the presence of Mrs. Johnson?
72 A. I do not just recall Mrs. Johnson.

Q. Can you give the date when one of those statements were made? A. It was in the last two years that I boarded there and I guess that was about a year before I went to Brookland.

Q. How many years before her death was the last occasion when you heard her make that statement? A. A year or so, I guess.

Q. A year or so before her death? A. Yes, sir.

Redirect examination.

By Mr. POE:

Q. I omitted to ask this witness one question in my examination-in-chief. I wanted to ask if you know what was the nature of the medicine. Do not answer this unless you know it from Mrs. Johnson or Mr. Beyer or Mr. Louis Beyer, Jr. Do you know the nature of the medicine that was given to Mrs. Beyer, your aunt, during this last sickness, in July, 1896? A. Yes, sir.

The COURT: From whom did she learn it?

By Mr. POE:

Q. From whom did you learn it? A. From Mrs. Johnson.

Q. You may state what it was that Mrs. Johnson said of the medicine—what medicine was used? A. She said it was morphine and champagne.

Q. Was that all that was said? Did she give any reason for that being the treatment?

Mr. RIDOUT: We are going to have medical witnesses. How can this lady know?

73 Mr. POE: This is one of the admissions of the parties.

The COURT: The reason why?

Mr. POE: Yes.

The COURT: I think that is competent.

Mr. RIDOUT: Yes; I think so.

(By Mr. POE:)

Q. State why. A. The reason why was to give her relief.

Q. Do you know what was the nature of her complaint? I do not mean specially, but generally. A. A liver complaint. That is what I understood. In the first place, a sort of Bright's disease.

Q. Mrs. Johnson told you they were giving her morphine and champagne. A. Yes, sir.

Q. When was that conversation? A. When she was dying—the last three days.

Recross-examination.

By Mr. MACKEY:

Q. When was that told you? A. In the last few days—when she took to her bed.

Q. What do you mean by the last few days? A. When she was sick in bed the last time. She had been ill for years.

Q. When did they commence to give her morphine and champagne, after she took to her bed; how long before her death? A. They told me that that was the medicine they were giving her to relieve her. There were no hopes for her, and they were giving her that to relieve her.

74 Q. You do not remember about how long that was before her death? A. The whole time I was going there that she was taking this medicine.

Q. How long was she in bed? A. I saw her 14 days before she died. I went up there every other day.

Q. When did you hear Mrs. Johnson say this? A. Why, when I was going to see my aunt, of course. She said that was the medicine she was taking.

Q. Were you there after that time—you were there 14 days before her death? A. Yes, sir; every other day.

Q. Every other day up to the time of her death? A. Yes, sir; up to the time of her death.

Q. On what occasion was it that Mrs. Johnson said this? A. When they were giving her this medicine I know that there was no hope for her, and this was given to her to give her relief.

Q. Was that the first visit or last? A. It was not the first or the last, but during the time. The first visit was 14 days before her death.

Q. And then you went every day? A. Every other day.

Q. And then the next time you went to see her was about 12 days before her death? A. Yes, sir.

Q. And you went every other day before her death; on which one of these visits was it that Mrs. Johnson said they were giving
75 her morphine and champagne to relieve her? A. She said they were giving her that all along; ever since she had taken to her bed.

Mr. Poe: I desire to offer in evidence a caveat to this will which was filed by Louis Beyer, Sr., and this other sister in the special term of this court for orphans' court business. The caveat was filed on the 14th of August, 1897. I desire to read it to the jury.

Mr. Ridout: That is peculiarly subject to the objection that it is not binding on my clients. This is the proceeding of certain persons, — Mr. Louis Beyer, Sr., in respect of which my clients were respondents.

After discussion:

The Court: I will not rule upon this point now. I will hear the rest of your evidence, and you may withdraw this for the time being. Later in the trial and before you close, if you still think you are entitled to this, call my attention to it; but let me know more about the case. It is a new question—new to me. I have had considerable to do with this class of cases in the last ten years, and I have travelled over this ground thoroughly, but on this point I am not satisfied. I will think about it.

Mr. Poe: We desire to offer in evidence a caveat to this will which was filed by Louis Beyer, Sr., in the special term of this court for orphans' court business. It was filed on the 4th of August, 1897. We desire to offer it in evidence and to read it to the jury.

Mr. Ridout: That is peculiarly subject to objection as not binding on my clients. This is a proceeding of certain persons,
76 among whom is Mr. Louis Beyer, Sr., and in which my clients were respondents. It seems to me that the petition filed by the actors against my client could not, in the aspect of the law of

evidence, be admissible as against them. I insist that it is not only admissible against us, but our answer should be admitted.

After discussion:

The COURT: I will tell you what I think. I will not rule upon the question now. I will hear the rest of your evidence. Withdraw this for the time being, and before you close, if you still think you are entitled to it, let me know after I shall have heard more about the case. It is a new question, new to me, though I have had considerable to do with this class of cases in the last ten years. I have travelled over this ground pretty thoroughly. I am not satisfied; I will think about it.

FANNY PERRY, a witness on behalf of the caveators, having been first duly sworn, testified as follows:

By Mr. POE:

Q. Your name is Fanny Perry? A. Yes, sir.
Q. Did you know Mrs. Mary Beyer? A. Yes, sir.
Q. And Mr. Louis Beyer, her husband? A. Yes, sir.
Q. And Mr. Louis Beyer, Jr.? A. Yes, sir.
Q. Did you know Mrs. Helen Johnson? A. Yes, sir.
77 Q. Did you know Mrs. Le Fevre? A. Yes, sir.
Q. Mrs. Stone? A. Yes, sir.
Q. Did you use to live with Mrs. Beyer? A. Yes, sir.
Q. How long did you live with her? A. I lived with her about three years.
Q. Whereabouts did you live with her? A. Number 2258 Brightwood avenue.
Q. How old are you? A. I am 20 years old.
Q. How long did you live with Mrs. Beyer? A. I lived with her about three years.
Q. Before her death? A. Yes, sir; up until the time of her death.
Q. Did you live there afterwards? A. Yes, sir.
Q. How long afterward? A. I did not stay there more than three months after her death, I do not think.
Q. Did you go back again after that three months to live with Mrs. Johnson? A. Yes, sir.
Q. In the same house? A. Yes, sir.
Q. You lived there as a servant, did you not? A. Yes, sir.
Q. Did you use to be there all day and all night, or only during the day? A. The first time I stayed morning and evening
78 and helped her around, after school, and after Mrs. Beyer got real sick I stayed there all day.
Q. Do you remember whether Mrs. Beyer went to Richmond in 1896, just about a month before she died? A. Yes, sir; I remember that.
Q. How long did she stay in Richmond? A. I was not there the day she left, but I do not think she stayed much over a week.
Q. What time did she get back? A. She got back the last of June.

Q. Did you see her when she came back? A. Yes, sir.

Q. What was her health then? Was she well or sick? A. No, sir; she was very sick.

Q. Did she go to bed right then? A. No, sir; not right then.

Q. How long was she about the house before she did go to bed? A. I do not think she was about the house more than a week before she went to bed.

Q. Do you remember the day she went to bed? A. I do not remember the day she went to bed.

Q. Was it before or after the Fourth of July? A. After the Fourth of July.

Q. How long after the 4th of July? A. One or two days after the Fourth of July.

Q. You remember when she died? A. Yes, sir.

Q. How often did she get out of the bed after she went to bed before she died? A. She was out of bed once.

79 Q. When was that? A. Why, it was in the morning when I was making the bed. She just sat up long enough for me to make the bed.

Q. You used to make the bed for her? A. Yes, sir.

Q. Did you use to wait on her? A. Yes, sir; I waited on her part of the time.

Q. Was she very sick or just a little bit sick? A. She was very sick.

Q. Did she get better or worse between that time and the time she died? A. She got worse.

Q. Do you remember a good many people coming there one day to see Mrs. Beyer about two weeks before she died? A. Yes, sir.

Q. Just state to the gentlemen of the jury and his honor what her condition was on the day that these people came to see her? A. The day the people came to see her she was very weak, and she was unable to sit up or help herself at all.

Q. Could she talk? A. She could talk, but not loud. You had to hold your ear down to her mouth to hear what she had to say.

Q. Did you give her medicine during that time? A. Yes, sir; I gave her medicines.

Q. You say she did not get up out of bed at all again? A. No, sir.

Q. Did she talk to you? A. No, sir; she did not have anything to say to me; only sometimes when I would speak to her

80 she would just whisper good morning or something like that—no conversation.

Q. Just tell us what occurred, in your own way, on this day that these people came to see her about two weeks before she died. A. The day the people came to see her I was not there; I had gone home to get ready to go to Sunday school, and Mrs. Johnson came to me to get me to help her to get supper.

Q. Mrs. Helen Johnson? A. Yes, sir; Mrs. Stone was there. I was going up into Mrs. Beyer's room, and I met Mr. Louis Beyer in the hall.

Q. Which Mr. Beyer? A. The young man.

Q. Junior? A. Yes, sir.

Q. You met him in the hall? A. Yes, sir.

Q. What was he doing? A. He was going to the room with a pen and ink. He did not allow me to go into the room. She said, "You go downstairs, and after you get the wagon hitched up take Mrs. Stone around to the Christian Endeavor encampment first and then take her home; if she knows what is going on here, she won't leave here tonight unless she gets a share in the profits."

Q. How many persons were there on that occasion? A. I do not know exactly the number. I did not see any of the people who were in the room. I did not go into the room, but I know Mrs. Stone was there.

Q. Did you see any buggies or anything of that kind around the house? A. Yes. sir.

81 Q. How many? A. One buggy out front and two in the back.

Q. Did you ever hear Mrs. Johnson and Mrs. Beyer talking about a will? A. Yes, sir.

Q. What did Mrs. Johnson say to Mrs. Beyer, and what did Mrs. Beyer say to Mrs. Johnson? A. I have heard Mrs. Johnson ask Mrs. Beyer to make a will, but Mrs. Beyer said she would not make a will; that everything would be left to Mr. Beyer just as it was, and for them to stay with Mr. Beyer and treat him right, and when he died he would do right by them.

Q. What did Mrs. Johnson say then? A. "This is the way you are going to treat me after I have been working for you all these years, and this will be all the thanks I'll get for doing it."

Q. Did you ever hear any conversations between Mrs. Johnson and Mr. Louis Beyer, Jr., about getting Mrs. Beyer to make a will? A. Yes, sir.

Q. What were those conversations? A. I heard Mrs. Johnson ask Mr. Louis to go and see about getting a will made when she got after Mrs. Beyer to make a will. She asked him to go and see what is to be done if she were to die and the will were not made. He went, and I heard him tell her that Mr. Beyer, Sr., and her sisters could come in and take possession of everything. She said then that she would see that a will was made.

Q. Now what else did you hear, any other conversation, about this time. When first did this last conversation take place; was it before or after Mrs. Beyer went to Richmond? A. It was

82 before she went to Richmond.

Q. Did you hear any conversations after she came back from Richmond? A. I heard Mrs. Johnson, after Mrs. Beyer was in bed, ask her to make a will. She said she would not make a will, but would leave it to Mr. Beyer. Mrs. Johnson said, "Yes, you will leave it to him, and he will sink it in a boat or rum mill." Mrs. Beyer said, "Nellie, how can you talk about your uncle like that?" Mrs. Johnson was after her to make a will, and she said she would not make it, and she said, "Nellie, you are harassing me to death." Mrs. Johnson said she would go if the will was not made; Mrs.

Beyer said, "You have run Mrs. Stone out of the house to get something when I die. You said she was waiting for a dead man's shoes, but you are the one to catch it."

Q. Were you there on the day of the funeral? A. Yes, sir.

Q. Were you there when they came back from the funeral? A. Yes, sir.

Q. Did you hear any conversation between Mrs. Johnson and Mr. Louis Beyer, Sr., about a will on that day? A. Yes, sir.

Q. What was that conversation? A. I was going upstairs to get a dress for the baby, and I saw Mrs. Johnson in the dining-room, and Mr. Beyer was sitting at the table. She went to him and put her arms around his neck and said, "The will is made," and he said it was not so. She said it was, and put her arms around him again, and he pushed her away.

83 Q. Who gave Mrs. Beyer her medicines during her last sickness? A. Why, sometimes I gave her medicine, and Mrs. Johnson.

Q. Did you know what kind of medicines they were? A. I only knew from what I heard said.

Q. Who said it? A. Mrs. Beyer.

Q. What did she say about the medicine they were giving her? A. She said the medicine they were giving her was doing her no good; most of it was morphine, to deaden her nerves, but nothing to build her up.

Q. What time did you get there on the morning that these people were there? A. I came in to work about half past six o'clock.

Q. Did you see Mrs. Beyer when you got there? A. Yes, sir.

Q. Did you go to the room when you went in? A. Yes, sir.

Q. What was her condition; could she talk to you? A. She did not say anything, if she could.

Q. Did you give her anything on that day? A. No, sir; I did not give her anything. Later in the day I gave her something.

Q. What did you give her? A. She had some champagne, and I gave her champagne. I had an egg, and I beat that up and gave it to her.

By Mr. MACKEY:

Q. Was that before or after the will was made? A. That was the same day.

By the COURT:

84 Q. Was it before or after the will was made that you gave her the champagne and egg? A. I gave it to her in the morning.

By Mr. POE:

Q. What time was it that these people got there? A. About four o'clock.

Q. Were you up there during the day? A. I went up off and on during the day. When they came down to get their dinner I was

up there, and I did not go any more until I went and told her good afternoon and went to get supper, and then she seemed to be asleep, and I did not bother her.

Q. How often did you see Mrs. Beyer after that before she died? A. I saw her every day before she died. That evening I went up *right late, because I did* not leave there until 8 o'clock that night.

Q. Do you know what doctors were attending her? A. I knew Dr. Smith was attending her.

Q. Did you hear any conversation between Dr. Smith and Mrs. Johnson about a will? A. I heard Dr. Smith ask Mrs. Johnson if she were going to get something after waiting on Mrs. Beyer, being so faithful to her, and Mrs. Johnson said she didn't know. Then Dr. Smith said if something was not left to her he would help her and see that something was left her.

Cross-examination.

By Mr. MACKEY:

Q. When did you say Mrs. Beyer went to Richmond—how
85 long before her death? A. Before her death?

Q. Before the death of Mrs. Beyer how long was it that she went to Richmond? A. She went to Richmond in June, but I do not know what part.

Q. You do not know whether it was the first or latter part? A. It was the latter part.

Q. Are you sure that she went to Richmond? A. That is what they said. I do not know.

Q. Do you not know that it was St. George's island where she went? A. I know she went to St. George's island once.

Q. Was not that the time she went to St. George's island? A. No, sir.

Q. When she came back she did not take to her bed for about a week? A. It was about a week before she went to bed.

A. After she took to her bed how long was it before these gentlemen came there to make this will? A. I do not think it was more than two weeks—not quite two weeks.

Q. It was not quite two weeks after she took to her bed that these gentlemen came there to have her make a will? A. Yes, sir.

Q. Were you in the room? A. No, sir.

Q. You were not in the room at all when the will was
86 made? A. No, sir.

Q. Were you in there that day? A. Yes, sir.

Q. I think you said you fixed some champagne and egg for Mrs. Beyer in the morning? A. Yes, sir.

Q. How was she then? A. She seemed to be very weak. She did not say anything to me.

Q. She took the champagne and egg. A. Yes, sir.

Q. Did she sit up and drink it? A. No, sir; she could not sit up.

Q. What time of day was it that these persons came? A. It was about four o'clock.

Q. You went out of the room? A. Yes; I was not in the room.

Q. When they came? A. No, sir; I was not in the room.

Q. Would Mrs. Beyer seem bright at times and more sick at other times—not so bright? A. No, sir; she did not seem to be bright at all.

Q. Her condition would be changed sometimes for the better and sometimes for the worst, would it not? A. No, sir; she got worse.

Q. Worse all the time? A. Yes, sir.

Q. Did she ever tell you to get anything for her? A. No, sir. All she could do was that she would move her lips. I knew what she wanted—ice water on the lips.

87 Q. That was close to her death? A. Yes, sir; that was close to her death, because for two weeks she laid there she did not say anything—could hardly speak or move. She would speak very soft when she did.

Q. That was about two weeks before her death? A. Yes, sir.

Q. Before that she had been talking some? A. She did not talk much.

Q. She talked some? A. Yes, sir.

Q. You understood what she said? A. You could if you put your ear close to her mouth.

Q. You understood her even after the will was made; you understood what was said, even though she said it in whispers? A. Yes, sir.

Q. What would she say? A. She would ask for things.

By Mr. RIDOUT:

Q. What day of the week was it that you saw some persons come there? A. It was on Sunday.

Q. Do you remember the day of the month? A. No, sir; I do not remember exactly what day of the month it was.

Q. Do you remember who the people were? A. No, sir; I did not see any; I did not go into the room.

Q. How did you know anybody was there? A. Because I was going up the steps, and when I got near the door I met Mr. Louis, and he told me I could not go in the room.

88 Q. That was the only reason? A. No, sir; not the only reason.

Q. What was the reason? A. When I went downstairs I heard Mrs. Johnson say to get Mrs. Stone and carry her around to the Christian Endeavor meeting. If she knew what was going on she would not leave unless she had a share in the profits.

Q. Do you remember when you first told anybody that you heard that remark made? A. That I told?

Q. Yes. Whom did you first tell that you heard that remark made? A. I think it was to Mr. Beyer.

Q. The old gentleman? A. I know I did tell it to him. I think it was to Mr. Beyer.

Q. When did you first tell anybody connected with Mrs. Le Fevre or anybody else? A. It was in July, I think—yes; in July.

Q. Shortly after the death of Mrs. Beyer? A. Yes, sir; it was after Mrs. Beyer's death.

Q. That you told Mrs. Le Fevre? A. I did not tell Mrs. Le Fevre; it was the old gentleman.

Q. You say you heard conversations between Mrs. Beyer and Mrs. Johnson about a will? A. Yes, sir.

Q. When was the first time you heard any conversation? A. It was during the winter. I do not know what time it was; but I know it was in the winter.

89 Q. The winter before she died? A. I do not know whether it was the winter before she died. I heard them talk about it. I do not know what day it was or the year.

Q. But it was in the winter? A. Yes, sir.

Q. The winter before Mrs. Beyer died? A. Yes, sir; I think it was in the winter before she died. Yes, sir; I think it was.

Q. Was Mrs. Stone living there then? A. No, sir; Mrs. Stone had moved.

Q. Do you remember seeing Dr. Smith at Mrs. Beyer's on the Sunday that you spoke of? A. I think he was there in the morning.

Q. You do not know whether he was there in the afternoon? A. Mrs. Johnson said Dr. Smith came to bring some of his friends; that is what she told Mrs. Stone. So he must have been there; but I did not see him.

Q. Was Mrs. Stone there on that Sunday? A. Yes, sir; Mrs. Stone was there, and she asked what those buggies were there for, and she said that Dr. Smith had some friends to see Mrs. Beyer. When she went outside she said, There is the polo wagon——

Q. Why are you so anxious to repeat that? That is the third time you have referred to it. A. I am not anxious to repeat it. It all came in together.

Q. Where are you employed now? A. Mertz building—janitress.

90 Q. You say that on this occasion there was a number of carriages standing out in front. How many were there? A. One in front; two in the back. One, Mr. Louis', Sr., the polo wagon——

Q. Did all three of them have horses hitched to them? A. Yes, sir.

Q. You are positive that on this occasion there were three buggies there, one of Mr. Louis Beyer's and two of somebody's else? A. Yes, sir.

Q. That was on the Sunday that all these people came? A. Yes, sir.

Redirect examination.

By Mr. POE:

Q. You say that you first told persons about these conversations some time in July, 1897? A. Yes, sir; in July.

Q. Where were you then? A. I was at the Freedmen's hospital.

Q. How did you happen to make these statements to these persons and who were they? A. They came over there and they were asking me some questions.

Q. Who were the persons? A. Mrs. Stone, for one, and Mr. Beyer and Louis—I do not know that he was. I do not think that there was anybody else there.

Q. Was Mrs. Maies there? A. I do not know whether she was there that day or not; no, sir; she was not there that day.

91 Q. Did they tell you why they wanted you to make the statement? A. No, sir.

Q. Did you make the same statement then that you have made here? A. Yes, sir.

Q. Did you swear to it? A. Yes, sir.

Q. Before a notary public? A. Yes, sir.

Q. How many times did they come to see you? A. He only came once.

Q. How many times did Mr. Louis Beyer, Sr., come to see you?

Mr. RIDOUT: All the testimony with regard to what Mr. Louis Beyer, Sr., did comes in under our objection. We wish to save the point.

The COURT: Yes.

(By Mr. POE:)

Q. How many times did he come? A. Once.

Q. Did he say anything about the will then? A. I do not know that he was going to have anything done to the will, only he asked me some questions, and I answered them. Then he came again. The first time I saw Mr. Beyer after that—I happened to come out of the hospital for a walk—he came over to the hospital, but he did not tell me what he was going to do.

Q. He did not tell you at the hospital what he wanted you to do? A. No, sir; he did not tell me what he intended to do—not that I remember.

92 Q. He did not tell you then that he wanted you as a witness? A. No; he did not say then.

Recross-examination.

By Mr. MACKEY:

Q. When you were living at the house there with Mrs. Beyer, you say you were there about three years? A. Yes, sir.

Q. Was Mrs. Johnson living there at that time? A. Yes, sir.

Q. Was Mr. Louis Beyer, Jr., living there at that time? A. Yes, sir.

Q. Both of them were living there? A. Yes, sir.

Q. Were they on friendly or unfriendly terms? A. They were on friendly terms. Mrs. Stone was in the house, too.

By Mr. RIDOUT:

Q. Have you ever lived at Mrs. Stone's house; and, if so, when? A. Yes, sir. I do not know exactly what year it was, but I think in 1898.

Q. How long did you live there? A. I lived there three months and one week.

GUSTAV FACIUS, a witness on behalf of the caveators, having
93 been first duly sworn, testified as follows:

By Mr. POE:

Q. You are a minister of the gospel and now in charge of the German Reform church at the corner of—— A. Yes, sir.

Q. Did you know Mary Beyer during her lifetime? A. Yes, sir.

Q. How long had you known her? A. I knew her about nine years, but I never came in contact with her until close to her death.

Q. When was it you saw her, in and about the month of July, 1896? A. As far as I can recollect, it must have been the second week in July—the beginning of the week.

Q. Where did you see her? A. I was in her room.

Q. You were there as her spiritual adviser? A. Yes, sir; I was called there as such.

Q. Was she in bed or not? A. She was in bed.

Q. I suppose you said a prayer for her—had religious service there, did you? A. Yes, sir; I offered a prayer.

Q. What was her physical condition at that time? A. She was very sick.

Q. How many times did you visit her after that and before her death? A. I cannot tell exactly—I do not recollect exactly, but it may have been four or five times.

94 Q. On any of those occasions, was she up out of bed? A. No, sir; I always found her in bed.

Q. Was she getting better or worse? A. I could not tell that.

Q. She died on the 26th of July? A. So I understood.

Q. You officiated at her funeral, did you not? A. Yes, sir.

Q. Do you remember whom else you saw on these visits that you made there? A. Requested me to come there?

Q. No; whom did you see when you went there? A. There were several persons about the room, particularly one lady whom I knew, from Baltimore, a certain Mrs. Boss. She was there, and the others were more or less not familiar to me.

Q. Could Mrs. Beyer move about in bed? A. Yes, sir; I saw her move about.

Q. Did she move her body or merely her head? A. I do not know; she was moving about.

Q. Do you mean tossing about in her bed or just moving about? Was she in pain? A. I do not know that she was in pain much; I did not hear her moan. At least while I was there I did not hear her.

Cross-examination.

By Mr. MACKEY:

Q. You say you first saw Mary Beyer the second week in July? A. Yes, sir.

95 Q. That would be about the 14th or 15th? A. About three weeks; not a week before her death.

Q. She died on the 26th of July? A. Yes, sir.

Q. Three weeks before her death—that would bring *her* up to about the 6th of July before you went there? A. Yes, sir; something about like that. I do not recollect, but it was something like that time.

Q. She wanted you because you were a German minister? A. Yes, sir.

Mr. POE: The witness did not say that she wanted him.

Mr. MACKEY: I asked him that. (To the witness:) She herself was German?

A. So far as I understand, she was German descent. I understand she was born in Baltimore.

Q. She understood the German language? A. Oh, yes; perfectly.

Q. Did you talk with her in German? A. Yes, sir; that was the request that was put to me, that I should offer a prayer in the German language.

Q. And you went there four or five times after that, from the 6th of July up to the time of her death? A. Yes, sir; about four or five times I went there.

Q. At intervals of about how many days would you go there? A. Say about a little over two weeks.

Q. You went there about the 6th of July, you say, and then you saw her four or five times afterwards? A. Yes, sir.

96 Q. Of course you did not see her every day? A. No, sir.

Q. How many days would elapse between your visits? A. About two or three days.

Q. And then you would go again? A. Yes, sir.

Q. At any time that you were there did you observe that Mary Beyer was unconscious or did not understand? A. No, sir.

Q. She always understood what you said? A. She always appeared to me conscious.

Q. And you talked to her and there was another minister there, was there not? —. Yes; the last time I was there—that was in the beginning, the first two days of the last week before her death. You see, I could not go afterward. I found another minister there. I do not know whether he was the regular minister. It was told to me that he was an Adventist. He offered a prayer, and I understood that she before visited his services, or something like that, and dur-

ing the week I had important business at Frederick, Maryland, and I was several days absent from the city. I went away on Thursday and stayed until Saturday evening, so as to be ready on Sunday morning for service, and in the afternoon I understood that Mrs. Beyer had died, and I stopped at the house.

Q. When this minister was there, whoever he was, he conversed with her, did he not? A. I did not hear him converse with her.

Redirect examination.

By Mr. POE:

97 Q. Did you ever converse with her? A. No; I did not converse with her—not on that day. When I left she always told me to call again. You see, you could not have any conversation because her sickness was very serious. In fact, it would not have been advisable to converse with her.

By Mr. MACKEY:

Q. Of course, you did not have any sustained conversation with her, but you did ask her a few questions, how she was, &c.? A. Oh, yes; I did that when I first met her—asked her how she felt and how she was, and her answer was that she was very sick.

Q. Her answers were intelligent? A. Oh, yes; she seemed to me conscious. She understood me perfectly.

By Mr. RIDOUT:

Q. Do you remember who it was who suggested that you should pray in German? Was that Mrs. Beyer? A. It was one of her nephews, I think, at my house. He asked me—he said that his aunt——

Mr. POE: We object to that.

The COURT: He was going to detail what the aunt said. I do not see that that *it* is material. It does not seem to me competent.

Mr. RIDOUT: Let the record stand as it is about that. (To the witness:) How frequently did you pray with Mary Beyer in German? A. I think about three times. I said the fourth time I did

98 not offer prayer; some of the other gentlemen prayed there. Q. And professional etiquette required that you should withdraw? A. I offered prayer every time I went there except the last time, when I found the other man.

Q. And when you did offer prayer, you offered it in German? A. Yes, sir; because it was her request.

Mr. POE: "That it was at her expense." We want that struck out.

The COURT: That was the witness' inference. I did not understand that the Doctor said that she asked him.

By Mr. MACKEY:

Q. Did she ever ask you to pray in German? A. Oh, yes; she

asked me to pray in German. I knew that she understood the English language perfectly, because she was a native of Baltimore. I asked her the first time whether I should pray in German and she said yes.

PATRICK J. BRENNAN, a witness on behalf of the caveators, having been first duly sworn, testified as follows:

Mr. POE: Your honor, this is one of the attesting witnesses to the will. Of course, I do not propose to be bound by his testimony. The rule, I think, is perfectly plain that I would have the right, even, to contradict him, if I chose to. I merely want to elicit from him the fact that the will was signed.

Mr. RIDOUT: Mr. Poe has admitted the *factum* of the will, and he does not need to call Mr. Brennan. I give him notice that he shall be bound by Mr. Brennan's testimony.

99 The COURT: I do not think you are called upon to prove the fact. You admit that the will was signed.

Mr. POE: Yes.

Mr. MACKEY: We assert that it was.

The COURT: You are at liberty to examine the witness about the circumstances.

Mr. RIDOUT: Yes; and I understand that he is bound by Mr. Brennan's testimony.

The COURT: We all understand what the rule is. I do not think you are bound by the testimony of the witnesses in this or any other case. You are at liberty to show that the witness is mistaken and all that. The distinct rule is that you cannot put any question looking to a contradiction of the witness.

Mr. POE: With the understanding that the cross-examination shall be restricted to matter brought out in the examination-in-chief I will ask a few questions.

The COURT: We always do that according to the rule of the supreme court.

Mr. RIDOUT: You understand, Mr. Poe, that we claim our rights?

By Mr. POE:

Q. What is your name? A. Patrick J. Brennan.

Q. And your occupation? A. Vice-president of the Cranford Paving Co.

Q. Are you a member of this bar? A. I am.

Q. How long have you been a practitioner here? A. I never practiced before the courts; simply became a member of the bar after examination.

100 Q. Where is your office? A. 1418 F street N. W.

Q. Where was it in July, 1896? A. The same place.

Q. Do you know where Louis Beyer, Jr.'s, office was then? A. Yes, sir.

Q. Where was it? A. 1418 F street N. W.

Q. The same building with you? A. Yes, sir; same building.

Q. In the same room? A. No, sir.
Q. Adjoining room? A. No, sir.
Q. Near to you, was it? A. The floor below.
Q. When did you become acquainted with Mrs. Beyer, the deceased lady? A. It was in July; about the time of the date of that will.
Q. Did you prepare this will? A. I did.
Q. Who asked you to go to see this lady? A. Mr. Beyer.
Q. Which Mr. Beyer? A. Mr. Louis Beyer.
Q. Junior? A. Yes, sir.
Q. You were present at its execution? A. Yes, sir.
101 Q. What became of it after it was executed? A. I took it to my office.
Q. To whom did you give it after that? A. After the death of Mrs. Beyer I gave it to Mr. Louis Beyer, Jr., and Mrs. Johnson.
Q. How many times did you see Mrs. Beyer before she executed this will? A. Never saw her before—that is, before she executed that will. I saw her twice.
Q. Whereabouts? A. At her house.
Q. Who was present? A. Dr. Smith and Mr. Sullivan on one occasion, and on two other occasions there was Dr. Smith, Dr. Atkinson, and I.
Q. Who is Mr. Sullivan? A. He is an attesting witness to the first paper that was signed.
Q. There were two papers signed? A. Yes.
Q. What became of the first paper? A. The first paper was burned.
Q. In your presence? A. I burned it myself.
Q. Whereabouts? A. I think it was at the residence of Mrs. Beyer.
Q. What day was that? A. That was on the Tuesday following the Sunday that the first draft of the will was drawn up.
Q. There were two wills executed by this old lady in July, were there? A. Yes; two wills executed.
102 Q. Were you a witness to both of them? A. Yes, sir.
Q. Dr. Smith was a witness also to both of them, was he? A. Yes, sir.
Q. Mr. Sullivan was the third witness to the first one? A. Yes, sir.
Q. And Dr. Atkinson was the third witness to the second one? A. Yes, sir.
Q. You say you are not a practicing lawyer now? A. No, sir.
Q. And you were not a practicing lawyer then? A. No, sir. I have a sign up. I attended to the local business of the company with which I am associated to some extent.
Q. Is Louis Beyer, Jr., associated with you in business? A. No, sir.
Q. How did Dr. Atkinson happen to come out and witness this paper? A. He is a friend of mine.
Q. You asked him to come out? A. Yes, sir.

Q. How did Dr. Smith happen to be a witness? A. I do not know. He was the attending physician, as I understand it.

Q. So this old lady made two wills in three days in July, did she? A. I do not know whether you call the first one a will or not. I discovered an error in the language I used, and I went out and corrected it and rewrote it.

103 Did you not put it in an envelope after the first one was executed and after you took it away? A. The first one?

Q. Yes. A. I do not think I had an envelope in the house; no.

Q. You read it over and found it was a mistake? A. Yes, sir.

Q. How did you know it was a mistake in her will? A. I simply had omitted the word heirs in making the fee.

Q. Was it not that somebody told you that it was invalid—a will made on Sunday? A. Hardly.

Q. Answer the question. That was not the reason? A. No, sir.

Q. Where was this old lady when she signed this first will? A. She was in bed.

Q. Where when she signed the second one? A. She was in bed.

Q. Did you have any conversation with her? A. Yes, sir.

Q. State what that conversation was on this occasion? A. On which occasion?

Q. When this will in controversy was executed—what was your conversation with her then? A. I read it over to her as prepared. If that is the paper, I read it over to her. I read the will over to her.

Q. What did she say? A. I asked her if that was her will,

104 if it was correct as she had instructed, and she said it was all right.

Q. Did she say it loud or low? A. Said it in an ordinary tone.

Q. Ordinary tone of voice? A. Yes, sir.

Q. Ordinary for her, or ordinary for other people? A. That I do not know. I suppose it would be an ordinary tone.

Q. You saw her twice? A. I saw her three times.

Q. Did she know the difference between the will that had the word heirs omitted and the one that had it in it? A. Yes, sir; I told her the reason, and explained that we would have to make a new paper.

Q. Did she assent to that, or say yes? Give us her language. A. There were different directions given after the submission of the second paper to her.

Q. I am asking you for the conversation with her. A. She directed that I make some changes in it, in the second paper as prepared with the corrections indicated by me at first—that is, the insertion of the word "heirs" Then she directed me to make other changes in the will.

Q. Did you make them? A. Yes, sir.

Q. Did you have your typewriter with you? A. No, sir; I took the paper back to my office and dictated it.

Q. I am asking for the conversation that took place on Tuesday,

and you are manifestly stating a conversation that took place
105 on Monday. I am asking for the conversation that took place at the time the will was executed? A. I read the will over to her, and Mrs. Beyer said that was all right as I had it written; said that was her will, and Dr. Smith and Dr. Atkinson were in the room when I read it over to her.

Q. Did they hear you read it? A. Yes, sir; I am positive of that.

Q. Did they say it was all right?

Mr. RIDOUT: This is the gentleman's own witness.

Mr. POE: I do not think he is my witness.

Mr. RIDOUT: I withdraw my objection.

The WITNESS: No, sir.

By Mr. POE:

Q. You say you saw this lady on three occasions? A. Yes, sir.

Q. Did you ever see her alone? A. Yes, sir.

Q. When was that? A. That was on the first occasion.

Q. Where was she then? A. She was in bed.

Q. What was that date? A. It was on Sunday.

Q. That was the day the will was executed? A. That was the day the first will was executed; yes, sir.

Q. When you got your instructions from her who were present? A. There was nobody present. Dr. Smith was in the next room.

106 Q. You saw her alone on two occasions then? A. I think Dr. Smith was in the room the second time; yes, sir.

Q. Did you go out there by yourself the first time you went there? A. The first time I went there; yes, sir.

Q. You got the address from Mr. Louis Beyer, Jr., I suppose? A. Yes, sir.

Q. How was the first will written; in her presence or not? A. Yes, sir.

Q. Wrote it right from her dictation? A. Yes, sir.

Q. She dictated it to you, did she? A. Practically so; yes, sir. She told me just what she wanted—what she wanted done with her property.

Q. The witnesses were all there at that same time, were they? A. In the room at that time, no, sir.

Q. No; I mean in the house at that time? A. Yes, sir; they were in the house.

Cross-examination.

By Mr. RIDOUT:

Q. When did you first become acquainted with Mr. Louis Beyer, Jr.? A. I suppose about 15 years ago.

Q. How long has your office been at 1418 F street? A. It has been, I understand, for about 27 or 28 years. I said the office of the Cranford Paving Co.

Q. How long have you occupied that office? A. Since 1884. I was with Mr. Cranford as clerk in 1884.

107 Q. On the occasion of your going to Mrs. Beyer's house, what did Mr. Louis Beyer, Jr., say to you which led to your going to the house?

Mr. Poe: I object to that.

Mr. Ridout: This is cross-examination. There has been an attempt to intimate that there was some understanding between young Beyer and this witness.

The Court: I do not see that there is any ground for that hearsay testimony.

Mr. Ridout: I do not think it would be hearsay.

The Court: Why not?

Mr. Ridout: Because it would be as to the fact. Mr. Poe has asked about the intimacy between these two gentlemen—whether they were intimate in business. We want to show that there was no understanding or relation between these two gentlemen such as his questions intimate. Therefore we wish to give the jury precisely what occurred between these two men.

The Court: I do not think that there is any inference to be drawn that counsel supposed that there was any conspiracy between this witness and young Beyer.

Mr. Ridout: I am willing to leave the question there. I tender myself ready to have all that occurred there.

The Court: I do not think it competent to prove by this witness or any other witness declarations against Mr. Beyer.

(By Mr. Ridout:)

Q. About what time in the day did you arrive at Mrs. Beyer's?

The Court: You mean the first time he went there?

Mr. Ridout: I am talking of the first time; yes.

The Witness: In the neighborhood of three or four o'clock,

108 I do not recollect exactly—some time in the afternoon.

By Mr. Poe:

Q. Did you go alone from your house to her house? A. Yes, sir.

Q. When you arrived there, what did you say to her when you first entered the room? A. I said, "Mrs. Beyer, I understood that you want to make a will."

Q. What did she say? A. She said, "Yes." She said, "Are you the lawyer?" I said, "Yes, ma'am."

Q. Do you remember what the next question she asked was? A. No, sir; I do not. She asked somebody to get a pen and ink and some paper.

Q. And that was done, was it? A. Yes, sir.

Q. Did she proceed? How did you get at her wishes? By asking her questions, or did she proceed to tell you? A. She proceeded to tell me just how she wanted everything left.

Q. Can you from memory state what she said on that subject—what her disposition was? A. There is one thing that I remember very distinctly. She said that she did not want to leave her husband, Mr. Louis Beyer, Sr., the property, because she said that he had already squandered about $30,000 of the money she had made in patents and inventions and all that, and said that she was afraid that if she left the property to him for life even, they might probably do something with it—entangle it to further his inventions that he was supposed to be carrying on at that time—that is,
109 experiments.

Q. Did she say what she wanted to do, so far as she was concerned? A. Yes, sir; I think that is clearly set forth. I tried to make it as clear as I could in the will.

Q. What did she say she wanted to do, so far as she was concerned? A. She said that she knew—that is, she hoped that Mrs. Johnson and Louis and Mr. Beyer would live in the house as long as Mr. Beyer lived. She said she did not want, in the event of a favorable condition presenting itself for a sale, any restriction on it in the way of giving it to Mr. Beyer for life.

Q. How did you ascertain, if you did ascertain, that Mr. Louis Beyer, Jr., was originally named Charles Louis Smith, and that he was Mrs. Mary Beyer's adopted son? A. Mrs. Beyer told me when I went in the room that Sunday afternoon.

Q. How did you obtain the names of the two sisters of Mrs. Beyer? A. Mrs. Beyer told me the names.

Q. How did you ascertain the spelling of those names which you doubtless remember as peculiar? A. I read them out to her and spelled them over, and asked her if that was the way, and, I think, in one or two instances she made corrections in the spelling that I had originally—that is, when she called out the name I would spell it phonetically, and she would probably change it one way or the other.

Q. How did you learn the amount of the legacy to be left
110 to these three persons? A. From Mrs. Beyer.

Q. Did she give any reason for giving the legacy? A. No, sir.

Q. In the first paper which you say was written and executed on Sunday, to whom was the residue of the estate given? A. The residue of the estate was given to Louis Beyer, Jr.

Q. When you had that instruction, was anything said by Mrs. Beyer about Mrs. Johnson? A. Yes, sir.

Q. What was it? A. She said she knew and would instruct Louis to give half of it to Mrs. Johnson.

Q. You have said that after the will was prepared you took it away? A. Yes, sir.

Q. And upon examination you discovered what you discovered to be an omission in it? A. Yes, sir.

Q. Explain to the jury a little more fully what that omission was as you supposed it to be. A. The intention of Mrs. Beyer was to leave the property absolutely to Louis Beyer, Jr., and in some cases

the omission of the word "heirs" bequeathed property only for life, whereas by the insertion of the word "heirs" it would leave it absolutely to him and his heirs, or he could dispose of it as he saw fit—left it to him absolutely.

Q. How did you ascertain, in preparing this first paper,
111 who was to be the executor? A. Mrs. Beyer told me.

Q. What, if anything, did she say about his giving bond? A. I asked if she wanted him to give bond and she said, No.

Q. What difficulty, if any, did you have in understanding what Mrs. Beyer said, by reason of her being unable to talk? A. None whatever; spoke very clearly.

Q. Do you recollect whether in your conference with her she made any inquiry concerning the validity of a will made on Sunday? A. Yes, sir.

Q. What did she ask you? A. That was probably the first question that was asked me—a few minutes after I went into the room—whether a will made on Sunday was good.

Q. And you told her it was? A. Yes, sir.

Q. What transpired at the execution of the will? After you prepared it did you read it to her? A. Yes, sir; read it all.

Q. Where were the gentlemen who witnessed it—Mr. Sullivan and Dr. Smith? Were they in the house? A. Yes, sir; in an adjoining room.

Q. Did you call them in? A. I called them in in the first instance, after I read the will over to Mrs. Beyer.

Q. What did you ask her in their presence? A. After the witnesses were called in?

Q. Yes. A. I stated that I had just prepared the will of Mrs. Beyer. I had read it over to her. I asked her if it was her
112 last will and testament, and asked her if she requested us to attest it as being her last will, and request the gentlemen to sign it as witnesses, which she did.

Q. In your conference with her, what difficulty did you have in making her understand what you said to her? A. None—no difficulty at all.

Q. What was done with that paper after it was signed by her and witnessed—I mean the first paper? A. I took it to my office and read it over the next morning.

Q. And it was then you discovered the omission of the word heirs? A. Yes, sir.

Q. What did you do with relation to preparing another paper? A. I prepared another paper with that insertion in it and took it to Mrs. Beyer's house the next day.

Q. That was the following Monday? A. Yes, sir.

Q. What did you tell her? A. I told her that I had made an omission in the phraseology of an important part of the paper—the omission of the word heirs, which might create a life estate instead of an estate in fee-simple, which I had corrected, and said that it was the same paper. I read it over to her.

Q. What did she say? A. She said, Inasmuch as the will has to

be rewritten, you might as well leave the property to Louis Beyer, her son, and Helen B. Johnson—put Helen Johnson in the will.

Q. In that copy the name of Helen Johnson did not ap-
113 pear? A. No, sir.

Q. What did you then do? A. Took the will back to my office and rewrote it according to her direction and returned there on Tuesday.

Q. Inserting Mrs. Johnson's name? A. Yes, sir.

Q. What difference was there between the first paper and the second paper? A. There is no difference except Mrs. Johnson and Louis Beyer, Jr., were left the residuary estate instead of its being left to Louis Beyer, Jr. All the other conditions were the same.

Q. In speaking of the second paper I speak of the paper which was finally executed after the paper which you took on Monday. A. There was no difference in that paper except the insertion of the word heirs.

Q. You have already told us the difference in the paper of Monday and the paper of Tuesday, namely, that Mrs. Johnson—— A. She was given an equal share.

Q. You went there on Tuesday? A. Yes, sir.

Q. What transpired on that occasion? A. I read the paper over to her as it was rewritten and had Dr. Atkinson and Dr. Smith—they were in the room—read the paper over to her, and asked her if that was her last will and testament; asked her if she acknowledged it to be such, and asked her if she requested us to sign it as her last will and testament. She requested the gentlemen to sign it as her last will.

114 Q. Did she sign in their presence? A. Yes, sir.

Q. And did they sign in her presence and in the presence of each other? A. Yes, sir.

Q. At the time when this paper was signed, this final paper, was Mrs. Beyer, in your opinion, of sound mind and capable of executing a valid deed or contract? A. She was.

Q. Please look at the paper I hand you (handing witness the will) and state whether that is the paper finally executed by Mrs. Beyer. A. Yes, sir; that is the paper.

Q. Is that your signature, P. J. Brennan? A. Yes, sir.

Q. And on the front of it also? A. Yes, sir.

Q. During the first visit and when you were obtaining instructions as to this will who were present—anybody besides you and Mrs. Beyer? A. As I remember, Dr. Smith was sitting in the adjoining room. There is a window that opens between the two rooms.

Q. Was either Louis Beyer, Jr., or Mrs. Johnson there? A. No, sir. There was one time that Mrs. Beyer called for a drink of water. I forget whether she called Mrs. Johnson or Louis and had them bring her a drink of water, and he did so and gave it to her.

Q. Did he remain after he gave her the water? A. Dr. Smith?

115 Q. No; Louis? A. No, sir. I do not remember whether he came into the room. I think he handed the water to Dr. Smith.

Q. Who was present on the second occasion when you had your conversation with Mrs. Beyer? A. Nobody except Dr. Smith.

Q. Did either Mr. Louis Beyer, Jr., or Mrs. Johnson at any time give you any instructions or directions concerning the contents of either of these papers? A. No, sir.

Q. Did you ever have any consultation with either of them about it? A. No, sir.

Q. From whom did you derive the information from which you prepared these wills? A. From Mrs. Beyer—that is, the lady who signed the will.

By Mr. MACKEY:

Q. The testatrix? A. The testatrix.

Q. After the last paper was signed, the one which you have identified, what was done with it? A. I took it to my office, put it in an envelope, sealed it up, marked what it was, and put it in my safe at the office.

Q. Did it remain there until after the death of Mrs. Beyer? A. Yes, sir.

Q. Then what was done with it? A. I took it down to Mr. Beyer, Jr.

Q. You knew from having prepared the paper that Mr.
116 Beyer, Jr., was named as executor, did you not? A. Yes, sir.

Q. And you knew, as a lawyer, the first duty of an executor was to prove the will?

Mr. POE: I object to that. What he did is evidence, but not what he knew.

The COURT: How would that have any effect on the case?

Mr. RIDOUT: The same reason that I made——

The COURT: It may go in.

The WITNESS: Yes, sir.

By Mr. MACKEY:

Q. And that is the reason you gave it to him? A. Yes, sir.

Redirect examination.

By Mr. POE:

Q. Might you not be mistaken about that—where you took it? A. I beg pardon.

Q. Might you not be mistaken about your having taken it to Mr. Louis Beyer, Jr.? A. No, sir.

Q. Suppose you were told that you made an affidavit, that it remained in your custody until you took it to the register of wills, would that have any effect on your answer?

Mr. RIDOUT: We object to that.

(By Mr. POE:)

Q. When you got out there on this occasion for the purpose of

having this will executed (which had been drawn) the witnesses were there, were they not? A. Mr. Sullivan was there. I do not think Mr. Smith was there.

117 Q. Who took Dr. Atkinson out there? A. As I remember, I went to his house.

Q. Did you take him out with you or you go in his buggy? A. I forget whether I took him out in my buggy or he took me in his.

Q. You went together? A. Yes, sir. I forget whether I took him in my own buggy or he followed me up.

By Mr. MACKEY:

Q. Did you arrange with the witness yourself, Dr. Atkinson, to take him out? A. Yes, sir.

Q. Did anybody suggest Dr. Atkinson to you? A. No, sir.

Q. Did anybody suggest that Dr. Smith should be a witness? A. No, sir.

By Mr. POE:

Q. Did you see Louis Beyer, Sr., on any of these occasions? A. No, sir. I would not know him even if I saw him.

WADE HAMPTON ATKINSON, a witness on behalf of the caveatees, having been first duly sworn, testified as follows:

By Mr. RIDOUT:

Q. You are a practicing physician? A. Yes, sir.

118 Q. How long have you been such? A. About nine years.

Q. Do you remember the occasion of your going to Mrs. Beyer's house to witness a paper? A. Yes, sir.

Q. Do you remember when it was? A. I do not remember exactly when it was. I will have to refer back to the memorandum book of that date.

Q. Approximately? A. It has been about three years ago—two or three years ago. It was in the summer.

Q. Do you remember why you went? A. I went at the request of Mr. Brennan to witness the signature of a lady to a will.

Q. When you arrived there what transpired? A. I was there on two occasions. The first occasion when I was there, there was to be an alteration or change in the paper. That was not ready to sign. Then another day after that I went. I do not remember whether it was the next day.

Q. What transpired on the last occasion? A. The last occasion I was there I met Dr. Smith. I met Dr. Smith on both occasions. We went into the room. I was introduced to the lady. Dr. Smith and I were in the room at the window, or in the room while Mr. Brennan read the will to the lady. Then we were called to witness her signature, which she signed right there in our presence.

Q. You saw her sign? A. Yes, sir.

Q. You signed in her presence? A. Yes, sir.

Q. And in the presence of the other two witnesses? A. Yes, sir.

119 Q. You had an opportunity to observe Mrs. Beyer. Please tell us whether, in your opinion, she was at that time of sound mind and capable of executing a valid deed or contract. A. She seemed to be a bright and intelligent lady. I observed nothing unusual. Of course, she was a lady in bed; had been sick; but otherwise she appeared in mind perfectly clear—perfectly conscious of what she was doing,

Q. Had you any acquaintance with Mr. Louis Beyer, Jr., or Mrs. Johnson? A. I did not know them at all.

Q. Were you requested by them or any one for them to witness this paper? A. No, sir; requested by no one but Mr. Brennan. Mr. Brennan asked me if I could go out and witness a signature to a will, and I told him I would.

Cross-examination.

By Mr. Poe:

Q. How long on these two occasions did you see this old lady? A. On the first occasion I did not see her at all.

Q. On the second occasion how long did you see her? A. I must have been in the room a half hour or more.

Q. How many conversations have you had on this case since the last of September and with whom? A. You were the first one I had any conversation with.

Q. How many with others? A. I do not know that I have had — with any one else. I spoke to Mr. Brennan that I understood there was a case where I signed the will.

Q. Did you not have a conversation with Mr. Brennan
120 about it? A. Nothing more than to ask about the dates.

Q. What other conversation do you remember about? Your mind seems a little fresh. A. Yes, sir. I heard a good deal more in the court.

Q. Do you not remember a conversation that you had with me last September, in which you said you did not know whether Mrs. Beyer was sitting up in the bed or in a chair? A. No, sir. I said she was sitting up in the bed.

Q. Do you not remember saying you did not know whether she was in a chair? A. It was three years ago, and remembering the number of people I have seen in the three years it is almost impossible for me to recall the circumstance; but before you left I think I told you, as nearly as I remember, that I thought she was sitting up in bed.

Q. Did you not tell me on that occasion that you did not remember whether the will was read to her? A. I told you on the first occasion that the will was read to her before she signed it, and in bringing the subject up and placing the circumstance I do remember distinctly that the will was read, and what part of the room it was in.

Q. It is further away now than it was then from the 14th of July, 1896. How is it your memory is better now than it was then? A.

That is very easy if you will remember that I never heard any word about that will or signature, or anything else, until the day you called my attention to it.

Q. And up to that time it was the only will that you had ever witnessed? A. No. I have witnessed one since that.

121 Q. I mean up to that time? A. That was one of my first wills.

Q. That was the first will you had ever witnessed? A. Yes, sir.

Q. You say that this old lady was sitting up in bed? A. Yes, sir; she sat up in bed.

Q. She was propped up? A. Probably a pillow to her back—something like that.

Q. How was her voice? A. Clear enough to be understood.

Q. How long were you there on that occasion? A. I do not remember exactly; but I must have been there a half hour. I do not remember exactly how long it was.

Q. How long have you known Mr. Brennan? A. I have known Mr. Brennan ten or twelve years.

Q. It was at his request that you went out there to witness this paper? A. Yes, sir.

Q. Did he call to you or did you call for him? A. Mr. Brennan, I think, came by my office and asked me if I could go at a time that would suit Dr. Smith's convenience. I was not so very busy and I told him that I could. I think that Mr. Brennan drove by with his horse, and I drove right on afterward. I had somewhere to go afterward.

Q. How long were you there on this occasion? A. Somewhere about a half hour.

Q. Were you in this room all the time? A. No. I do not know that I was in the room all the time; but in the hall and back room.

122 Q. How long were you in that lady's presence? A. I was in her presence twenty minutes or thereabouts.

Q. You have sworn that she was of sound and disposing mind and capable of making a valid deed or contract. Is your opinion based on these two interviews with her or have you any other means of judgment? A. That is all I know.

Q. That is all you know about it? A. Yes, sir.

Q. You did not witness two papers; you did not see her only on this one occasion? A. I only witnessed one paper.

The court (at 3 o'clock p. m.) adjourned until tomorrow, the 7th inst., at 10 o'clock a. m.

WASHINGTON, D. C., *December* 7, 1899.

The court met pursuant to adjournment.

Present: Mr. Poe and Mr. Wallace, on behalf of the caveators; Mr. Ridout and Mr. Mackey, on behalf of the caveatees.

Mr. POE: We desire to offer in evidence a deed from Helen B. Johnson and her husband and Louis Beyer, Jr., to Louis Beyer, Sr., of a portion of the property of Mary Beyer.

The COURT: This is the deed of which you spoke on yesterday.

Mr. POE: Yes. This deed was executed on the 31st day of July, 1896, about four days after the death of the testatrix, and according to the evidence about two days after the fact of the existence of a will had been furnished by the husband.

123

The COURT: I do not hear any objection.

Mr. RIDOUT: I reserve my exception as stated on yesterday.

The COURT: As I understand, your only objection is that it is irrelevant; throws no light upon the case?

Mr. RIDOUT: Yes.

The COURT: I think while it may not be very important it may be of some consequence.

Mr. RIDOUT: We reserve an exception.

The COURT. Certainly.

Mr. POE: The deed is in Record Book 203, at folio 372.

We also offer in evidence, unless my brothers will agree to the fact—the papers I cannot find, but the minutes of the court show that it was on the 20th of August, 1896, that Charles Louis Smith, who is called Louis Beyer, Jr., applied to this court to have his name changed to Louis Beyer, Jr., that being a month after the date of the will itself and a few days prior to its being offered for probate by him. I suppose there is no objection to that; that is the fact.

Mr. RIDOUT: If the court think that relevant I have no objection.

The COURT: Yes.

Mr. MACKEY: Of course, it could not affect Mr. Beyer in this matter at all what he did after the making of the will.

The COURT: I do not know that it could.

Mr. POE: We will rest here except for the purposes of rebuttal.

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ERNEST AUGUSTUS SELHAUSEN, a witness on behalf of the caveatees, having been first duly sworn, testified as follows:

By Mr. MACKEY:

Q. You are a practicing physician in Washington, I believe? A. Yes, sir.

Q. How long have you been practicing your profession? A. Twenty years.

Q. Were you acquainted with Mrs. Beyer, deceased? A. I only saw her once in my life.

Q. State the occasion on which you saw her—how you came to see her. A. Having a consultation over her case with Dr. Smith.

Q. You were summoned there for a consultation? A. Yes, sir.

Q. About when was that—how long before her death? A. That was within two weeks of her death.

Q. You went out there, did you? A. Yes, sir.

Q. Whom did you see there? A. I wanted to meet the Doctor and I could not meet him. I went the next day with the expectation of meeting him, the same hour, and I did not meet him, but I saw the patient.

Q. Did you make an examination? A. Yes, sir.
Q. What did you find was the matter? A. I found that she was suffering from carcinoma colloid.
125 Q. State what was the state of her mind; whether she was unconscious.

Mr. POE: We object to that. We do not think this witness has laid any foundation to speak as to the mental capacity of the testatrix.

The COURT: Suppose you see how much the witness talked with Mrs. Beyer.

(By Mr. MACKEY:)

Q. Did you talk with her—ask her questions? A. Yes, sir.
Q. From your conversation with her, state whether or not she——

Mr. POE: We object.

(By Mr. MACKEY:)

Q. Did she make any explanation to you of the occasion for your coming there? A. Yes, sir.
Q. State what she said. A. She knew that I was coming to consult with Dr. Smith.
Q. As a result of your conversation with her, will you state what her condition of mind was; whether she was intelligent——

Mr. POE: We object.

By the COURT:

Q. How long did you talk with her? A. About 20 minutes.
Q. What questions did you ask her? A. Concerning her case—how long she had been sick.
Q. What did she say to you on the subject? A. I cannot say exactly what she said.
126 Q. Can you not remember generally what she said? A. It was all about her case. When I asked her some questions she answered quite sensibly. I did not find anything abnormal about her mind.

The COURT: What is the objection to the witness giving his opinion based on what he has stated?

Mr. POE: We do not think a witness of this character has to answer whether at this time this person was of sound and disposing mind——

The COURT: It is the form of the question.

After discussion:

The COURT: We agree upon the law. The only place where there is any chance of controversy is that you think the court should require more to satisfy it, while the court is satisfied the witness may give an opinion. My impression is that the authorities at the present day go very far. There are some and well-considered cases that go so far as to say that the court ought not to exclude the opinion, if any reasonable opportunity has been afforded for the

person to form an opinion. In a case of that kind, now, much depends upon the intelligence of the witness, to begin with. There are some witnesses whom I would not permit to give an opinion—who had so little chance to form an opinion. This is an intelligent witness. He is a non-expert, but he is an intelligent man, and had a chance to talk with the will people and all that, and it seems to me that a sufficient foundation has been laid to permit him to give his opinion. Of course, the jury takes it in connection with the opportunity that he had to form an opinion, and they will give his opinion such weight as they think it is entitled to. I express no opinion as to the weight. They may think it very weighty. We think it worth nothing at all, or very little, and that is for them. I think it is admissible.

127 Exception noted.

(By Mr. MACKEY:)

Q. State from your conversations with Mary Beyer whether in your opinion she was of sound mind and understanding and capable of executing a valid deed or contract at the time. A. I think she was of sound mind and capable.

Q. Of executing a valid deed or contract? A. Yes, sir.

Cross-examination.

By Mr. POE:

Q. You were summoned here on behalf of the defendants? A. Well, I do not know by whom; I do not know whether by the defendants or whom.

Q. Who was present when you had this 20-minutes interview with this lady? A. There were two ladies present.

Q. You did not wait to keep your consultation appointment with Dr. Smith? A. No. I waited about 20 minutes and he did not come. He wanted me to come the day before, but I did not meet him that day, and I went the next day at the same hour and he did not come.

Q. When was the last time you saw Dr. Smith? A. I cannot say the exact date. It must have been the 15th or 16th. I do not know exactly.

Q. How long ago was it that you saw him last, speaking from now? A. I saw him this morning.

Q. How long before you were summoned as a witness did
128 you see him? A. In this case?

Q. Yes. A. Yesterday.

Q. Did you have any talk with him about this case? A. No, sir; just——

Q. No talk about the case? A. Just speaking about the case—not what was the matter with him or anything like that.

Q. You had some talk with him about the case? A. No.

Q. Did he ask you how you happened to be in the court and he happened to be in the court? A. Yes, sir.

Q. Well, you did get to talking about the case, did you not? A. Not exactly.

Q. Did he ask you if you were a witness? A. He asked this morning if I was summoned by the defendant- or the plaintiff.

Q. Have you ever been paid for the visit that you made to this old lady? A. No; indeed, I do not know whether I have been paid or not.

Q. You do not know? A. No.

Q. You have never filed any bill against the estate, have you? A. I do not think they owe me money, because I did not keep my date.

129 Q. You have not been paid for your services? A. No, sir—that is, I do not know whether I have been paid or not. I do not remember.

Q. Do you know what the charge was that you made against them? A. No; I do not remember what I charged or whether I made any charge or not.

Q. Are you a specialist in cancer diseases? A. I am a specialist in everything—I am a general practitioner.

Q. You are an all-around expert, are you? A. Yes, sir.

Q. Did you examine this lady with reference to her capacity to make a valid will or contract? A. I did not know anything about it.

Q. You examined her merely for her physical ailments, and you were there 20 minutes? A. Twenty minutes; yes, sir.

Q. You do not know that you were there 20 minutes? A. I think it takes about 20 minutes to examine a case, at least.

Q. Where was this lady? A. On Brightwood avenue.

Q. What part of the house? A. In the second story. I believe it was the front room.

Q. Was she in bed? A. Yes, sir.

Q. You say it was the 5th of July? A. No; it must have been the 15th or 16th—the middle of the month.

Q. You made an inspection as well as an examination of
130 her to see what was the matter with her. Was she in much pain? A. None at the time.

Q. Did you suggest any mode of treatment to her? A. No; I do not believe I did, because I did not have any right to make any suggestion.

Q. You did not prescribe for her, even, did you? A. No, sir.

Q. Was her disease, in your judgment, progressive and incurable at that time? A. Yes, sir.

THOMAS C. SMITH, a witness on behalf of the caveatees, having been first duly sworn, testified as follows:

By Mr. RIDOUT:

Q. State your name and professional business. A. Thomas C. Smith; my profession is that of physician; my residence is 1133 12th street N. W.

Q. You knew the late Mrs. Beyer? A. Very well.

Q. How long did you know her? A. I knew her several years—probably three or four years before her death.

Q. What occasion was there for your acquaintance with her? A. I was called in to attend her professionally.

Q. How long was that before her death? A. When I was first called to see her, if I recollect aright, it was in December, 1893. She was suffering from symptoms of an ordinary case of indigestion.

131 Q. She died in July, 1896? A. July, 1896.

Q. How frequently were you a visitor at her house after that? A. I was called in many times to attend her for temporary ailments, and then discontinued my visits to return to the house when sent for by the family. Sometimes I would attend her three or four days at a time, and then maybe pay her one or two visits sometimes for a week at a time.

Q. How well acquainted were you with her? A. I became pretty well acquainted with her, being called to see her so often, and then many times called to see other members of the family I would see her.

Q. Do you remember when the illness of which she died commenced—when it first developed? A. I cannot fix the date of that, but probably earlier in the year 1896. The symptoms of malignant disease were so pronounced as to be unmistakable. Before that the symptoms pertained more to disease of the liver of a chronic character without pointing to malignity.

Q. What did you finally diagnose the disease to be? A. The case diagnosed as one of cancer.

Q. Of what part of the body—where? A. Within the abdomen. I do not know that it is necessary for me to state to the jury that it was revealed cancer.

Mr. POE: No; she died of cancer; there is no doubt about that.

By Mr. RIDOUT:

Q. What effect on the brain power is produced by a disease of that character as to diminishing its force? A. Do you mean as to her intelligence?

132 Q. Yes. A. I never saw any evidence to impress me with the belief that she was not perfectly sane.

Q. What we want to know is whether there was anything in the nature of this particular disease, the effect of which would be to impair the efficiency of the brain. A. Not at all; not until within a few days of her death.

Q. Do you recall at any time any allusions by Mrs. Beyer, in conversation with you, to her purpose to make a will? A. No, sir.

Q. Do you remember whether you ever had any discussion with her on the subject of her will? A. Not a word.

Q. Do you recall the Sunday on which Mr. Brennan was at the house? A. To witness the will?

Q. Yes. A. Yes.

Q. Do you remember why you were there on that occasion; why

you were at the house on Sunday? A. I intended to make a professional call, and was also requested to witness the signing of the will.

Q. When were you requested? A. The day before.

Q. And who requested you? A. I do not remember; some member of the family; perhaps Mrs. Johnson.

Q. When did you arrive at the house on that Sunday? A. I cannot fix the hour, but my impression is about the middle of the day.

133 Q. Had Mr. Brennan arrived when you reached there? A. Mr. Brennan arrived, I think, shortly after I did. We met by appointment at a certain hour.

Q. State, as nearly as you can recollect, what transpired after you arrived there and after Mr. Brennan arrived. A. Mr. Brennan produced a paper, which he proceeded to read.

Q. I am talking now about Sunday. I am asking you what occurred on Sunday, the first day that you were there. A. The first day that this——

Q. When he first paper was signed. A. I am not sure whether it was on Sunday. I do not recollect for certain when I went into the room. When Mr. Brennan came, he proceeded to read a paper which he had prepared, and which, as the reading progressed, I observed was the draft of a will by Mrs. Beyer. Mr. Brennan read the will through, and when he had concluded the reading Mrs. Beyer said, "Where is Helen; where is Helen? You have left Helen out; Helen is to go into the will." Mr. Brennan said, "Who is Helen?" She said, "Why, my niece, Mrs. Johnson; she is to have a share with Louis." Mr. Brennan said he had misunderstood her, something to that effect, and he would have to prepare the papers again; that he had understood that she proposed to leave the bulk of her estate to Mr. Louis Beyer, Jr. The next day that we met, Monday or Tuesday—I do not recollect the day, however, the day the will was signed—I sat close to Mr. Brennan; by accident he came and sat down where I was sitting. I was sitting by Mrs. Beyer's bedside, and was so sitting that I overlooked the paper that Mr. Brennan read to Mrs. Beyer. As he read it, I followed in looking over his hand, and I heard him read it word for word as it was

134 written. When he concluded the reading of the will Mrs. Beyer said, "That is right; that is right."

Q. Who were present on that occasion? A. I do not know that I remember all who were present. Mr. Brennan was present and Dr. Atkinson.

Q. Was Dr. Atkinson present when the paper was being read? A. I do not think the Doctor paid any attention to the reading.

Q. Was he in the room? A. He was in the room, but I do not think he paid any attention to the reading of the will.

Q. After Mrs. Beyer made the statement that it was all right, what else was done? A. Then she proceeded to sign the will, and it was duly witnessed.

Q. Who witnessed it? A. Mr. Brennan witnessed it, Dr. Atkinson, and myself.

Q. You were all present at the same time? A. All present.

Q. Mrs. Beyer signed in the presence of all three of you? A. Yes, sir.

Q. You signed it in her presence and in the presence of each other? A. That is right.

Q. At the time she signed this paper was she, in your opinion, of sound and disposing mind and capable of executing a valid deed or contract? A. Perfectly so.

135 Q. Do you recall an occasion, a day or two before this final paper, when Mr. Sullivan was present? A. Mr. Sullivan was present the first day we went there to witness the will, but he was not present the third day.

Q. When you were called in to witness the first paper, do you remember in what part of the house you were when you were called? A. In Mrs. Beyer's bed-room.

Q. Were you there when Mr. Brennan arrived the first day, on Sunday? A. I do not remember. We all arrived about the same time. There was an hour fixed for us to be there. We all got there within a few minutes of each other.

Q. Do you remember whether you were present there two or three times for the purpose of signing papers? A. Twice.

Q. You do not think you were there three times? A. I do not think so. I have no recollection of three times. We were requested to be there at a certain time.

Q. Your recollection is that on the first occasion Mrs. Beyer made objection? A. Yes, sir.

Q. And it was because of that objection that Mr. Brennan took the paper away and came on a subsequent occasion? A. Yes, sir.

Q. What is your recollection of how long you were with Mrs. Beyer on Sunday or on the first day—the day the first paper was proposed? A. I think nearly a half hour; quite a half hour.

Q. What was her condition mentally on that day? A. Excellent.

136 Q. Do you remember whether or not you and Sullivan and Brennan signed a paper on the first occasion? A. I am pretty sure we did not. I am pretty sure we did not. I have no recollection of having done so.

Q. Your recollection is that you signed one paper only? A. Only one paper, because Mrs. Beyer said that Mrs. Johnson's name was not there, and no paper was offered for signature.

Q. And your recollection is that Mr. Sullivan took no part in witnessing the paper? He went away and did not sign as a witness. That is your recollection? A. That is my recollection.

Q. When you first formed the acquaintance of Mrs. Beyer, do you remember who composed the household? A. I cannot say as to the certainty about that. Mrs. Johnson was apparently the housekeeper. I think that Mrs. Stone, her husband, and little — were, as I understood it, boarding there—boarders—and Mrs. Beyer and Mr. Beyer, Sr., whom I very seldom saw.

Q. Was young Mr. Beyer living there? A. Young Mr. Beyer was there; yes, sir.

Q. What, if you know, were the relations between Mrs. Beyer and young Mr. Beyer and Mrs. Johnson? I mean as to whether they were affectionate relations or otherwise. A. Very cordial relations; very cordial relations.

Q. Do you recall at any time being asked by Mrs. Beyer whether she ought to make a will? A. She never spoke to me on the subject of a will, nor did I to her.

Q. After she made it did you have any discussion with her
137 about it? A. Never. After the signing of the will the subject was never mentioned.

Q. Do you recall when Mrs. Beyer went away for a brief visit to Virginia or elsewhere? A. I remember her going away, and I think she went to St. George's island at my suggestion. I thought it might benefit her by going to salt water. I think she was there. I am not sure whether it was in the month of June, the month before she died, or the year before. I do not recall. I simply know that she went away. I do not remember the date.

Q. Then you do not know anything about her going to Richmond? A. I never heard it—that is, I do not recollect it.

Q. Then your attendance upon her during the latter part of June and the first part of July was pretty frequent? A. From the 6th of July up to her death I saw her every day; sometimes more than once a day.

Q. It has been testified by some of the witnesses that during the period between the 6th and 14th of July, which was the date of the execution of the will, Mrs. Beyer's condition was such that she could not make herself heard, and that she was unable to express her wishes or to move about. What is the fact as to her mental condition during the period up from the 6th to the 14th of July? A. Feeble. Of course, she was feeble physically, and her voice, never very strong, but with my bad ears—I am sorry to say I am very hard of hearing—I could understand distinctly everything she said to me.

Q. It has been testified that her treatment was such as to stupefy her. A. She was given narcotics to relieve her pain. She
138 was not constantly under the influence of narcotics. Sometime she would have pain, which would call for a small dose of anodyne in the form of opium—powdered opium or morphine—but never enough to make her stupid. She was not under the influence of opium all the time.

Q. Upon the occasion of this final paper, had there been any abnormal quantity of morphine administered to her? A. Not at all. My impression is upon that day none was administered.

Q. It has been stated that champagne was adminstered? A. People with progressive diseases suffer from nausea—vomiting—and when other remedies fail we sometimes give champagne, with cracked ice, to relieve that condition—a tablespoonful of champagne, with a little cracked ice—not enough to produce any effect at all on the patient's mental condition.

Q. What effect would champagne have upon a narcotic? A. It

would rather counteract the effect of it. In her case it was not given for any such purpose.

Q. Tell us where St. George's island is. A. It is in the Potomac river, two or three miles below Piney Point, and about 90 miles down the river.

Cross-examination.

By Mr. POE:

Q. How long have you been a practicing physician? A. Thirty-five years last March.

Q. Of what college are you a graduate? A. Georgetown university.

Q. You are not a specialist, are you? A. No, sir.

139 Q. A general practitioner? A. General practitioner.

Q. I understood you to say that on the 12th of July you happened to be on a professional visit at Mrs. Beyer's when Mr. Brennan came there? A. No, sir; I said I went there. I intended to make a professional visit that day, but had been requested to meet there at a certain time to witness the signing of Mrs. Beyer's will.

Q. I think you said you were requested by Mrs. Helen B. Johnson? A. I think she told me the will was to be signed and requested me to be there that day.

Q. And there was a Mr. Sullivan there as well as Mr. Brennan? A. I think that was the name.

Q. Did you know him before? A. No, sir.

Q. Do you know his initials? A. I think they are M. P. Sullivan. I state that from seeing the sign at the corner.

Q. What is his business—grocery store? A. Liquor business—I do not know; I think so.

Q. Mr. Brennan came there at what hour? A. I cannot tell the hour.

Q. I believe you said that you were in Mrs. Beyer's room when he came? A. Yes, sir.

Q. And he came there with a paper which he produced and read? A. Yes, sir.

140 Q. If he says that he came there and sat down at her bedside and she dictated her will to him—told him what she desired her will to be—and he read it there in her presence, he is mistaken, is he not? A. I am not sure. As far as my recollection goes, Mr. Brennan read this paper. I have told you that I am not sure whether I got there first or Mr. Brennan. We all arrived there about the same time. It may be, now that you have asked this question, that he may have gotten there before I did and written it down—made this paper which he had in his hand when I saw him.

Q. You say he got there about the same time you did. How do you know that? A. Because I was to be there at a certain time.

Q. How long was the paper, and how long would it have taken him to write it there? A. It depends on how rapidly he writes.

Q. First, how long a paper was it? A. I think it took him five or six minutes to read it to Mrs. Beyer.

Q. That paper was not executed? A. Not to my knowledge.

Q. If Mr. Brennan said it was, and he afterwards burned it up in your presence, he is mistaken? A. I have no recollection of his burning it.

Q. When he says it was executed by Sullivan and you as witnesses at the request of Mrs. Beyer he is mistaken? A. That is my recollection.

Q. If he says it, his recollection differs from yours on that subject? A. On that subject it does.

141 Q. You say that early in 1896 symptoms of the malignant nature of her disease became pronounced? A. Yes, sir.

Q. An abdominal cancer is, of course, we are bound to believe, incurable, is it not? A. Unless it is very early detected, and it may be sometimes successfully removed by a surgical operation when it involves a limited a[illegible].

Q. This one had progressed so far that, in your opinion, it was incurable? A. Yes, sir.

Q. It was continually, then, progressing, was it not? A. Yes, sir.

Q. The patient was getting worse instead of better each day of her life? A. Yes, sir.

Q. Do you tell this jury that with this incurable disease her mind was not becoming weakened as well as her body by its approaches? A. There are two diseases, cancer and consumption, in which the mind is rarely affected. As the disease advances many times the mind becomes clearer than ever before.

Q. The disease strengthens the mind, rather than weakens it? A. It seems to bring it out, to make it brighter; not necessarily to strengthen it. I do not say in all cases.

Q. Do you remember whether this first paper that Brennan had there was typewritten or not? A. I do not.

Q. You do not remember signing it? A. No, sir.

142 Q. You do not remember Brennan signing it or Sullivan signing it? A. I do not.

Q. You do not remember the testatrix requesting either of you to witness it as her last will and testament? A. I do not.

Q. On this last Sunday when you and Dr. Wade Atkinson and Mr. Brennan—you met there for the purpose of doing what? A. I do not remember to have met these gentlemen there but twice. It seems from what I have stated that Mr. Brennan was there three times. It may be that Mr. Brennan the first time came there to write these notes down at Mrs. Beyer's dictation.

Q. He does not call it notes, but the will? A. I do not know that.

Q. He swears it was the will itself, and you afterward executed it there, and Dr. Wade Atkinson said that the purpose of your assembling there on Monday was to make a slight alteration in the will that had been already executed, in which he omitted the word "heirs." Do you remember that? A. I do not remember anything about that.

Q. Have you ever witnessed many wills in your life? A. Yes, sir; many.

Q. Do you ever remember one ever before read to the testator or testatrix by the professional gentleman? A. Yes, sir.

Q. How many? A. I cannot recall them. You ask me that, and I say yes.

Q. Do you know one? A. I know one.

143 Q. And these two occasions are all you can recall where the will was read? A. It has to be acknowledged.

Q. It is generally a private and confidential matter between the adviser and testator, is it not? A. I do not know.

Q. How much is your bill for your professional attendance on Mrs. Beyer? A. I have no bill; I have been paid.

Q. By whom? A. By the estate.

Q. Did you ever present any bill in the orphans' court and have it approved and have it passed? A. Yes, sir; I did.

Q. When was it paid? A. I think it was paid about a month after the death of Mrs. Beyer—shortly after Mr. Beyer bonded, qualified.

Q. Did you ever see Mr. Beyer, Sr., there on the occasion of the alleged execution of either of these papers? A. I do not recollect seeing him there.

Q. Do you not recollect that he was not there? A. That is my recollection, that he was not there.

Q. Louis Beyer, Jr., was there? A. I do not know about that, but I think he was.

A. And was not Mrs. Johnson there? A. I know she was there or thereabouts.

Q. Do you not think that Louis Beyer, Jr., was there or thereabouts? A. I think so; I saw him about the house.

Q. On that occasion? A. Yes, sir.

Q. When Mr. Brennan says he was not there and did not

144 see him, he was mistaken?

Mr. RIDOUT: That is an unintentionally inaccurate statement of Mr. Brennan's testimony, which was that Mr. Beyer was there and brought in a pen and ink.

Mr. POE: I do not so understand Mr. Brennan's testimony.

After discussion:

The COURT: Fanny Perry said Louis Beyer, Jr., was going through the hall with pen and ink, but I do not remember whether Brennan gave the name of the person who got the pen and ink.

(By Mr. POE:)

Q. Was Dr. Wade Atkinson a friend of yours before this? A. I do not know that I should call him a friend. We are on personal terms.

Q. You are professionally acquainted with each other? A. Yes, sir: that is all.

Q. I understood you to say that this lady was not all the time

under the influence of morphine. Was that your language? A. Yes, sir.

Q. Does a person recover immediately and rapidly after being under the influence of a narcotic of this kind or gradually or slowly? A. It depends on how much is taken. Where a medicinal dose is taken, the stupor—we do not want to produce—we simply give enough to alleviate the pain; then the patient will drop into a slumber because of the relief from pain, but that is not an opiate.

Q. Did you use this as an anodyne and not as a narcotic? A. As an anodyne.

145 Q. That is to relieve pain and not to produce sleep? A. Yes, sir.

Q. Would Mrs. Beyer rest well when without pain? A. Sometimes she would rest well and then again her nights would be restless.

Q. She was not up and about after the 6th of July, was she? A. The last few weeks of her life she kept her bed pretty much all the time, except when she got up to respond to the calls of nature.

Q. She had, of course, to be assisted then? A. Generally.

Q. Do you remember who were present on the execution of this paper, on the 14th of July, 1896—the paper in controversy? A. I do not know who were present except those who witnessed the will and Mrs. Beyer and myself. This has been six years since it transpired and these details I am giving to the best of my memory.

Q. That is what I am trying by my cross-examination to get at—the best memory you have. I want to refresh it. You remember that you were requested by Mrs. Johnson on the first occasion to meet Mr. Brennan? A. I think so.

Q. How did you happen to meet him on the second occasion? Was that at the request of Mrs. Johnson also? A. I think there was an understanding between us that we would come back when Mr. Brennan brought the correct paper.

Q. That is, corrected in the respect that Mrs. Johnson had been left out? A. Yes, sir.

146 Q. Mr. Brennan corrected it in the respect that he had only created a life estate in Louis Beyer, Jr.? A. I do not remember about that.

Q. He testified that the first will he drew for this old lady he intended to leave *to* the residuary estate in fee-simple to Louis Beyer, Jr.; that when he got to his office he examined the will which he had taken with him and found that he had left out the word heirs and he was afraid that he had only created a life estate, so that he corrected that himself and brought the corrected paper back on Monday afternoon to be executed, and that Dr. Atkinson was there, and that you were there, but for some reason it was not executed on that Monday. Now, are you sure that he is not right about that? A. My recollection does not serve me to answer to that feature. I do not remember distinctly about that.

Q. Do you not remember that it was on the second occasion that he came back that this exclamation about Mrs. Johnson was made, and

that it was made by Mrs. Johnson and not by Mrs. Beyer? A. Most emphatically, you are wrong. That is one thing that I do remember distinctly—that Mrs. Beyer exclaimed positively and with more emphasis than I thought she was capable of, "Where is Helen? You have left Helen out of the paper; I want her to go in;" and Mr. Brennan asked, Who is Helen? and she said, "My niece, Mrs. Johnson; she is to share equally with Mr. Beyer."

Q. You do not know when that occurred? A. It occurred when I was there.

Q. On which one of these three occasions was it that it occurred? A. I cannot be any more exact than that.

147 Q. Do you say that champagne will not make people drowsy? A. I should think it would if you take enough of it.

LOUIS BEYER, JR., a witness on behalf of the caveatees, having been first duly sworn, testified as follows:

By Mr. RIDOUT:

Q. Your name is Louis Beyer, Jr.? A. Louis Beyer, Jr.

Q. What was your name originally? A. Charles Louis Smith.

Q. What relation were you to Mrs. Mary Beyer, deceased? A. Nephew.

Q. Son of a deceased sister of hers? A. Yes, sir.

Q. Do you know, from what you have heard, where you were born? A. I was born in Mrs. Beyer's residence in this city.

Q. Where was her residence at that time? A. At the corner of 2d and N streets N. W.

Q. How long did you continue to reside at Mrs. Beyer's residence? A. All my life.

Q. How old were you when your mother died? A. I cannot recall. I was an infant.

Q. What is your opinion on that subject—what has your aunt ever told you on the subject? I mean Mrs. Mary Beyer. A. With reference to what?

148 Q. To your age when your mother died? A. From what I recollect, I imagine I was about three years old; maybe a little younger.

Q. Who took charge of you upon your mother's death? A. Mrs. Beyer.

Q. By what name were you known in the family? A. Always called Beyer from that day.

Q. How did your aunt address you or treat you—as a nephew or a son? A. It was understood that I was adopted by her from the time of my mother's death.

Mr. POE: I object to that.

Mr. MACKEY: That is a family matter.

Mr. POE: You cannot understand that you are adopted. There is a legal way of doing that. That is not a question of pedigree.

The COURT: I think you have a right to prove what was actually

done and what was actually said about it. I should say that the expression "it was understood" is rather too indefinite.

By Mr. RIDOUT:

Q. How did you understand it? A. By being designated as son.
Q. By whom? A. By my aunt.
Q. Mrs. Beyer? A. Yes.
Q. Was she accustomed to speaking to you as her son? A. She never addressed me by that term; she always addressed me by name.

149 Q. I understand that you continued to live with your aunt until her death? A. Until her death.

Q. When did your aunt, if at all, first speak to you on the subject of her making a will? A. Some time prior to her death.
Q. About how long? A. I should say about two months; probably less than that; probably one month; some time during the month of June.
Q. Do you remember what she said? If so, state what it was. A. My recollection is that her intention——
Q. State what she said. A. She stated that she would make a will leaving the property to me, knowing that my conscience would allow me to perform what she wanted to do—by making an equal division of the property with her niece, Helen B. Johnson. I was to dispose of one of the small houses in the rear to accommodate the wants of our uncle.
Q. Louis Beyer, Sr.? A. Louis Beyer, Sr.
Q. You spoke of Mrs. Johnson. What is her relation to Mrs. Beyer? A. Niece.
Q. When did she go to live at Mrs. Beyer's house? A. As far back as I can remember.
Q. How long did she live there? A. All her life—all our life.
Q. How was she treated by Mrs. Beyer? A. The same as an adopted daughter would be treated.

150 Q. Do you know what Mrs. Beyer's impression was prior to her decision to make a will as to the rights of her husband in the event she should die without making a will?

Mr. POE: I object to that.

Mr. RIDOUT: We purpose following that up by showing what Mrs. Beyer's information was as to the legal rights of Mr. Beyer, and then her decision.

The COURT: The proper way for you to proceed would be to ask the witness what the testatrix said on that subject.

(By Mr. RIDOUT:)

Q. State anything that Mrs. Beyer ever said in your presence in regard to the rights of her husband in the event of her dying without making a will. A. She did once or twice in conversation ask what Mr. Beyer would have in the event of her dying without making a will.
Q. Do you know when it was that she learned that he would not

inherit in the event of her making no will? A. I think it was up to within two weeks prior to the time when the will was made.

Q. Do you recall whether Mrs. Beyer informed you at any time that if no will was made Mr. Beyer would not inherit? A. She found out that in the event no will were made the sisters would become heirs to the property.

Q. Has there been any child born to Mr. and Mrs. Beyer? A. No, sir.

Q. Please fix as nearly as you can the execution of the will—when Mrs. Beyer first spoke to you of her intention to make a will. A. As I said, I think it was about two weeks before.

Q. That would be about the first of July, 1896? A. It
151 was probably a few days before she went away on a visit to St. George's island. Her intention was to execute the will.

Q. When did Mrs. Beyer first, if at all, give you instructions to cause a lawyer to come to the house in connection with her proposed will? A. Immediately on her return.

Q. That was what day? A. I cannot recall the day, but I think it was about a week before the will was executed.

Q. What did you do or say to her when she spoke to you of having a lawyer make the will? A. As a matter of fact, for convenience, I suggested the name of an attorney in the neighborhood.

Q. What is that gentleman's name? A. Mr. Oscar Nauck.

Q. That was on the Sunday prior to the 14th of July? A. Yes, sir.

Q. What did Mrs. Beyer say in response to your suggestion that she have Mr. Nauck? A. She had some objection to Mr. Nauck; she did not care to have him prepare the will.

Q. Then what did you do? A. Then, as a matter of convenience, Mr. Brennan's name was the first to spring into my mind. I suggested him, and she was satisfied.

Q. How long had you known Mr. Brennan? A. Twelve years.

Q. How intimately? A. I cannot say that I ever knew him intimately. We were in the same building together, but we were
152 never associated in business.

Q. Associated together socially in any way? A. No; never.

Q. You have stated that Mr. Brennan's name came into your mind. What did you do? A. When I suggested Mr. Brennan's name, Mrs. Beyer told me to obtain him.

Q. What did you do? A. I immediately boarded a car and went to Mr. Brennan's residence and requested him to call at the house. Mr. Brennan asked me if I had paper at the house that would be suitable. I said, No. He said, I will go up by the office and get the paper; which he did.

Q. At what time did he arrive at the house? A. I think in the afternoon, about half past three.

Q. What happened after he arrived there, so far as you have personal knowledge? A. Why, he was introduced to Mrs. Beyer.

Q. By whom? A. By me. And I left him there in her room.

Q. Where did you go? A. I think I went downstairs.

Q. When did you next see Mr. Brennan—on that day I mean? A. When he departed.

Q. Did he give you any information concerning what had transpired in the room? A. None whatever.

Q. Do you remember whether you went to the room, or to the door of the room, during the time he was there? A. On which occasion?

153 Q. I mean on this first occasion. A. Yes; I obtained the pen and ink necessary for the writing.

Q. What did you do with it? A. I gave it to Mr. Brennan and immediately left the room. As a matter of fact, I did not enter the room.

Q. Did you go there again at that interview? A. No, sir; I was about to say, as a matter of fact, I knocked at the door, called Mr. Brennan to the door, and delivered the pen and ink there.

Q. When did Mr. Sullivan arrive, if at all? A. Mr. Sullivan was requested to come a few minutes after Mr. Brennan got there.

Q. Do you remember who requested Mr. Sullivan to come there? A. I think I went to the house.

Q. And you told him that you wanted him to witness this will? A. Yes, sir.

Q. When did Dr. Smith arrive? A. Dr. Smith arrived, I think, a few minutes after Mr. Sullivan.

Q. Was Dr. Smith sent for to witness the will on that occasion, or was it a professional visit? A. I do not know whether it was a professional visit. I cannot remember whether he was there earlier in the day or not.

Q. When do you remember Mr. Brennan again coming? A. Mr. Brennan came on the following day.

Q. Were you there when he came? A. I think not. I was at work.

154 Q. Do you remember what time of day it was? A. No, sir.

Q. You say you were at work. What is your business? A. I am associated with M. M. Parker in the real-estate business.

Q. What are your office hours? A. From half past eight until after four.

Q. Then you have no personal knowledge of Mr. Brennan's coming or what transpired on the second occasion? A. On Monday; no sir.

Q. On Tuesday, what is your recollection of what transpired in respect of the will? A. I was not present on that occasion.

Q. Where were you? A. At the office.

Q. You have no personal knowledge of the hour Mr. Brennan arrived on that occasion? A. No, sir.

Q. You have said something about a conversation in which Mrs. Beyer gave you some instructions in respect of Mrs. Johnson? A. Yes.

Q. What were those instructions? A. Why, she had previously told me that her intention was to leave the property in my charge

in fee-simple—that is, that her will would give the property to me—and she had enough confidence in me to know that I would carry out her intentions, which she had expressed, as I said before.

Q. Please state what her intentions were. A. That I was eventually to give half the property to Mrs. Johnson. She was to
155 own jointly with me. During the lifetime of our uncle we were to retain the home, and during his lifetime sell one of the houses.

Q. In the conversation with her did Mrs. Beyer give you any reason why it was that she gave him a home? A. No; just stated it.

Q Did she say anything about an absolute estate? A. She did not leave the property to him for fear it would be lost.

Q. State what she said. A. She has often said to me and to others——

Q. State what she said to you—the substance of it. A. That too much money had been wasted prior to that time on inventions, of which he has quite a number, and lost in that way.

Q. Have you any knowledge of the fact that Mr. Beyer has lost money in promoting inventions?

Mr. POE: I object.

The COURT: That is a circumstance.

The WITNESS: I have.

By Mr. RIDOUT:

Q. After the death of Mrs. Beyer when did you first obtain any information concerning the actual contents of the will and from whom? A. After her death?

Q. Yes. A. I obtained the information through Mr. Brennan.

Q. When did he tell you that? A. I think it was on the following—the second day after the funeral.

Q. What day of the week was that? A. The third, I think; on a Tuesday.

156 Q. That would be Thursday, probably, of that week? A. On Thursday.

By Mr. POE:

Q. That would be July 30? A. Yes, sir.

Q. Prior to that time had you any knowledge except from what Mrs. Beyer had said to you of the contents of the will? A. No, sir.

Q. What did Mr. Brennan do with the will finally after Mrs. Beyer's death? A. Mrs. Johnson and I were requested to come to his office, and the will was opened and read to us.

Q. Then what was done with it? A. The will was delivered to us. I handed it to Mr. Hoehling to be probated.

Q. What did you do in respect to discharging duties as executor? A. In what particulars?

Q. Did you qualify?

Mr. POE: The best evidence is that he would not be here as defendant unless he had.

The WITNESS: Yes, sir.

By Mr. RIDOUT:

Q. A deed has been offered in evidence from you and Mrs. Johnson to Mr. Beyer. State the circumstances of that deed. A. The circumstances were these: When Mr. Beyer received knowledge that there was a will in existence he made things very disagreeable with both Mrs. Johnson and me, and not as a matter of compro-
157 mise, but as a matter of duty, we both deeded him, not the rear part, as expressed here, but nearly all, except the home site. He had the frontage on Brightwood avenue, as well as the rear.

Q. How was the frontage on 8th street improved? A. Improved by six two-story brick dwellings.

Q. Are those the dwellings to which you alluded when you said Mrs. Beyer instructed you to sell one or two of those under certain circumstances? A. Yes, sir.

Q. Did Mr. Louis Beyer, Sr., continue to live in the family home? A. No, sir.

Q. When did he remove therefrom? A. We left the house ourselves first. Things got so unbearable and such a hardship for Mrs. Johnson that she determined to rent property elsewhere, which she did.

Q. And you moved away and the old gentleman remained there? A. He remained there temporarily, and then finally moved himself.

Q. And you and Mrs. Johnson moved back? A. Yes, sir.

Q. How long before his second marriage? A. Only a month or so.

Q. When your aunt spoke to you of her wish to make a will on that Sunday, do you recall any questions she asked you in respect to its validity if made on Sunday? A. Yes, sir.

Q. What did she say? A. She asked if it would be legal.
158 Q. What did you do in response to that? A. I could not determine the question then, and I looked the matter up by reference to an encyclopædia we had, and we found that it would be.

Q. What? A. That a will executed on Sunday was a good will.

Q. Did you state that to her? A. Yes, sir.

Q. Was that before you went for Mr. Brennan or after? A. Before I went to Mr. Brennan.

Q. Do you know when Mr. Beyer, Sr., first learned of the fact that the will had been made and how? A. I think it was the day following the funeral. That was on Wednesday—on the morning of Wednesday.

Q. There has been some testimony here about the fact that Mrs. Stone went from Mrs. Beyer's house to see an encampment on the White Lot? A. Yes, sir.

Q. State what your recollection is of that circumstance. A. At the time my horse and carriage were in the stable. I think it was the intention—in fact, I know it was the intention—of Mrs. Johnson to take the children down to the White House, and for that purpose I

left the disposition of the horse to them and used a car in going to Mr. Brennan's house. When I returned—in the meantime Mrs. Stone and her daughter came to the house, and, as a matter of courtesy, the invitation was extended to them, which she accepted.

Q. Do you recall whether after Mrs. Stone left there she came back that evening? A. Yes, sir; she returned to the house.

Q. Before she went home? A. Yes, sir.

159 Q. Did she go to see Mrs. Beyer after she got back? A. I think so.

Q. Do you remember what time in the afternoon it was when Mrs. Stone returned? A. Do you mean from the encampment?

Q. Yes. A. About half past six or seven o'clock, I think.

Q. Do you remember whether you saw the witness Fanny Perry at the house when the will was being executed on the first occasion—on Sunday? A. She may have been at the house. I presume she was.

Q. Do you recall meeting her in the hall and sending her downstairs? A. I do not.

Q. It is a fact that by decree of the court your name was changed from Charles Louis Smith to Louis Beyer? A. Yes, sir.

Q. State why that was done. A. Why, it was suggested to me by Mr. Hoehling. It had always been assumed. I assumed, through neglect or probably through ignorance, that the change did not have to be effected by act of court. They took it for granted that the assuming of the name was sufficient.

Q. By what name had you been known all your life? A. By the name of Louis Beyer, Jr. There are thousands of records to that effect. I might say that that decree was retroactive, too.

Q. The witness Perry testified that on one occasion she heard a conversation between you and Mrs. Johnson, in which Mrs. Johnson asked you to ascertain what would be the effect if Mrs. Beyer made

160 no will, and expressed her determination to see that Mrs. Beyer did make one. What is your recollection on that subject? A. I do not recall such a conversation. I think Mrs. Beyer requested me to see what effect it would have if she made no will.

Q. As a matter of fact, was any plan formed between you and Mrs. Johnson to procure the execution of a will by Mrs. Beyer?

Mr. Poe: I object to that. Whether there was a plan formed is the question for this jury to try. Get at the fact and let the jury say whether there is a plan or conspiracy. That is the fact for the jury and not for the witness.

The Court: The only question I have about it is the form of the question. That the witness has a right to testify upon that point, as to whether he and Mrs. Johnson made an agreement to get a will, and in pursuance of that agreement did get it, I have no doubt; but the form of that question is a little shaky. I think you have the right to put the question directly to the witness as to whether he used any influence—urged or persuaded this woman to make the will, and whether Mrs. Johnson did.

Mr. RIDOUT: I will put it that way. (To the witness:) What, if any, efforts did you make to procure the execution of this will by Mrs. Beyer?

A. None whatever.

Q. So far as you have personal knowledge, did Mrs. Johnson make any such efforts? A. Not that I know. I think not.

Q. Did she and you in combination make any such efforts? A. No, sir.

161 Cross-examination.

By Mr. POE:

Q. I understood you to say that you are a real estate-broker and agent here in Washington. A. I am not a broker in the term used. I am with Mr. Parker and have been with him.

Q. Mr. Myron M. Parker, 1418 F street? A. Yes, sir.

Q. That is the same building in which Mr. Brennan has his office? A. Yes, sir.

Q. You have been in Mr. Parker's employ how long? A. Twelve years this month.

Q. You and Mr. Parker have a good many real-estate dealings together? A. We have a few; I cannot say a great many.

Q. A great many dealings pass through your office involving the examination of papers. Is Mr. Brennan employed by the firm of M. M. Parker for that purpose? A. Never, never. All our papers are prepared by a title company.

Q. How old are you? A. I was thirty-one last month.

Q. Where does Mr. Brennan live or where did he live in 1896? A. He lived on the corner of 4th and M streets N. E.

Q. Mrs. Beyer was quite a sick woman on the 12th of July, when she asked you to go for somebody to draw a will? A. I had no reason to think so more than at any time previous.

Q. Why did you look up in an encyclopædia to find that
162 a will could be executed on that day and then go and get a lawyer to go and execute the will? A. Merely because she requested me to.

Q. You went to oblige her? A. Yes, sir.

Q. Were you in the room on Sunday when the first will was executed? A. No, sir.

Q. You heard Mr. Brennan's testimony in reference to that will and its execution? A. I did.

Q. What have you to say about that? A. I think Mr. Brennan's testimony is correct.

Q. You think that the will making you the sole legatee and creating a life estate in your uncle, inadvertently doing so, was actually executed and acknowledged by your aunt on the 12th day of July, 1896? A. Yes, sir.

Q. You also think that in 72 hours your aunt executed two wills? A. Yes, sir.

Q. Now, you say you made no exertion to have this will executed? A. No.

Q. You went to the man who was to draw it? A. Yes, sir; at her request.

Q. Answer my question. You went for the man to draw it, did you not? A. Yes; as I stated before, I suggested another attorney.

163 Q. Answer my question, and if you have an explanation to make you can make it. You went for one of the witnesses, did you not? A. Yes, sir.

Q. And Mrs. Johnson requested the other witness to be present? A. I think that that information is wrong. I believe that Dr. Smith, after recalling the circumstances, volunteered to act as a witness.

Q. You want to contradict Dr. Smith? A. Not contradict. I think it escaped his memory.

Q. You do not think that Mrs. Johnson knew that you had gone for Mr. Brennan to draw a will? A. Oh, Mrs. Johnson knew it; yes, sir.

Q. She knew that you were going to bring Mr. Brennan back with you or send him back? A. I suppose that was the intention.

Q. How long was Mr. Brennan in there by himself with your aunt? A. I think over an hour.

Q. Dr. Smith makes a mistake in that respect when he thinks Mr. Brennan was there only a few minutes? A. Dr. Smith's testimony was not to that effect. He said he could not tell quite how long Mr. Brennan had been there before.

Q. He said a few minutes. He was there by appointment? A. He may have been there by appointment; but he said that he did not know how long Mr. Brennan had been there before. I think that was his testimony.

Q. You think Dr. Smith made a mistake when he said that Mr. Brennan came there with a will already drawn, do you not? A. Why, certainly.

164 Q. Did you say that before? A. No, sir.

Q. You say that you are not on particularly intimate terms with Mr. Brennan? A. No, sir.

Q. But you knew the nature of the paper which was about to be executed by your aunt? A. Only from what she had told me.

Q. The general nature, from your conversations with her? A. Yes, sir.

Q. You knew that Mr. Brennan came there and the paper had been executed, and you permitted him, a comparative stranger, to take it away with him, and never demanded it? A. I did not know that I had any reason to demand it.

Q. You knew that you were the sole residuary legatee? A. I cannot say that I did. I did not know but what she might have changed her mind from what she had spoken to me about.

Q. Was she apt to change her mind? A. I do not know that she was.

Q. Was she a woman of strong will? A. Yes, sir.

Q. She made two distinct wills in 72 hours? A. Yes, sir; I think Mr. Brennan stated that it was his fault.

Q. If Mr. Brennan is correct, she made three wills in 72 hours. Now, you think this was stated in the will—that if it was desired you might sell off a few of the houses? A. No; that was her verbal instructions.

165 Q. That is, if occasion required to sell off one or two of the lots in the rear; that was your language? A. Yes, sir.

Q. Will you be kind enough to look at this will and see if you find any such provision as that in it? A. I did not say that was in the will; I say that was in the conversation. She instructed me some time before the will was executed.

Q. You say you had a disagreeable and uncomfortable time in consequence of the execution of this will and its peculiar provisions up there, as to how you should live together? A. Yes, sir.

Q. Tell us a little more in detail what those times were, and what the conversations were between you and Mrs. Johnson and your uncle. A. As a matter of fact, my uncle was disappointed, in fact he supposed the property was to go to him.

Q. He had never been invited when your aunt was making the will? A. As a matter of fact, he was away from the house.

Q. Was he present on either of those occasions? A. No, sir.

Q. Was he in the house on either of those occasions? A. No, sir.

Q. Was he informed that she was about to make a will? A. Not that I know.

Q. Do you not know that he was? A. I do not.

Q. Do you not know that you swore that he first knew it July 30, 1896? A. Put the question again.

166 Q. Did you not swear that your uncle first knew that the will had been executed on the 30th of July, 1896, and he made it so warm for you up there on the 30th that you executed this deed? That was not a compromise, but it was one out of your sense of justice. A. That is about the fact.

Q. Did you leave the house when Mrs. Johnson did? A. I did; yes, sir.

Q. How long did you stay away? A. Three months.

Q. Did you leave your uncle in sole possession? A. Yes, sir.

Q. Whereabouts did you and Mrs. Johnson go? A. Moved on Spruce street, Le Droit Park.

Q. Then your uncle moved away and you came back? A. Yes, sir.

Q. It was impossible for you to get along in the same house after your aunt died? A. That was the cause of our moving.

Q. Was not the will the cause of that unpleasantness? A. The effect of the will.

Q. The will itself? A. The fact that he did not get the property; the will had been made and he got out.

Q. How about sending his clothes down to Florida avenue? A. I did that on an order of his attorney.

Q. Have you that order? A. Yes, sir.

Q. Let us see it (examining paper). Then, when he moved

away you and Mrs. Johnson came back there to reside, and
167 you have resided there ever since, have you? A. No; I resided there until December, 1897.

Q. Does Mrs. Johnson still reside there? A. Mrs. Johnson still resides there.

Q. Were you present some time in the month of May, 1896, and about the 11th, I think it was, when your aunt borrowed $2,800.00 from the Riggs bank? A. Yes, sir.

Q. Do you know what was the object of her borrowing that money? A. Yes; there was a mortgage of the same amount which had matured at that time, and a new loan had to be negotiated to take care of it.

Q. Was the money from the same people? A. No, sir; different parties—mortgaged through the office of Simon Wolf and Cohen.

Q. So that no money passed? A. No, sir; the same amount, $2,800.00, dollar for dollar.

Mr. RIDOUT: Do you offer that paper? You called for it.

Mr. POE: I suppose I am bound to have it in as evidence. I called for it and looked at it. (To the witness:) Do you swear that Mr. Brennan did not tell you that he was afraid that this first will created only a life estate in you?

A. Yes, sir.

Q. It was his own suggestion that that will should be changed and the words "heirs" put in, so far as you know? A. He never suggested it to me.

Q. I say it was his own suggestion. A. That there should be a change?

Q. Yes. A. Yes.

168 Q. And he had never seen your aunt before and was only slightly acquainted with you? A. Twelve years. I said twelve years.

Q. You said slightly? A. Slightly in effect.

Q. Did you hear your aunt scream out and make this outcry that Dr. Smith described "Where is Helen's name?" when he presented the will to her on Sunday? A. No, sir.

Q. Where were you at that time? A. I was downstairs.

Q. You said that you do not recall the fact of meeting Fannie Perry in the hall as you went with the pen and ink in your hand into the room? A. Yes.

Q. You do not say that you did not meet her; you might have met her? A. I do not think I did meet her.

Q. You do not recall it; it was a trivial circumstance at the time and did not make any impression on your mind; is that what you mean? A. That is it—not particularly.

Q. Why did you not employ a lawyer to have this will drawn for your aunt? A. Why, Mr. Brennan, I believe, was a member of the bar at the time the will was prepared.

Q. He is not a practicing lawyer? A. That makes no difference.

Q. You are in one of the largest real-estate houses in town here

and you have occasion to see the difficulties under wills. Do
169 you not think it requires an experienced man to draw a will that disposes of over 20 or 30,000 dollars? A. You overstate the amount.

Q. How much is it? A. I think the property would be nearer $12,000.00.

Q. You made an affidavit that it was more. A. $16,000.00—nearer $16,000.00 than $30,000.00.

Q. Why did you go to an inexperienced man instead of going to some friend? A. I had no friends. Mr. Brennan was the first name that suggested itself to me.

Q. Mr. Nauck, you say, is a notary public out there? A. Yes, sir.

Q. He is a practicing lawyer, is he not? A. Yes, sir; I think so.

Q. And your aunt had some objection to him? A. Yes, sir.

Q. Who is the nearest lawyer in the neighborhood? A. Mr. Nauck.

Q. Who is the next nearest? A. I have not the slightest idea.

Q. You do not know whether there is any other nearer than Mr. Brennan? A. No, sir.

Q. There was a good deal of haste in having that will executed on Sunday? A. No haste at all.

Q. How long have you known Dr. Wade H. Atkinson? A. I do not know the gentleman.

Q. What hour in the day of July 30, 1896, was it that Mr. Brennan told you first of the contents of this will? A. What hour in the day?

170 Q. Yes. A. I think it was in the morning some time.

Q. That is a little indefinite. Let us get a little nearer than that. What part of the morning? A. I should say about noontime—some time like that—the best I can recall.

Q. Did you go home and tell your uncle that there was a will? A. No.

Q. Who told it? A. He had been told before.

Q. By whom? A. Mrs. Johnson.

Q. Mrs. Johnson told him? Did she know the contents of the will? A. No, sir; she simply informed him that there was a will; that was on the morning following the funeral.

Q. Did Mrs. Johnson know the contents of the will that was destroyed? A. Not that I know.

Q. She knew it was destroyed, did she not? A. Yes.

Q. Did she know her name was not mentioned in it? A. No, sir.

Q. How did she know the contents of it? A. I said she did not know the contents.

Q. I think you said she did. A. No, sir; I did not.

Q. She knew that one had been executed? A. Yes, sir.

Q. It was not because Mrs. Johnson preferred to have her estate in black and white instead of trusting it to you that this
171 second will was executed, was it? A. I think not.

Q. Your aunt's physical condition, I believe, was continu-

ally retrograding—she was gradually sinking from the time she went to bed, on the 6th of July, up to the time of her death? A. I did not notice it particularly about the time around the 14th; later I did.

Q. All right up to the time this will was drawn, was she not? A. And until some time after.

Q. There was only twelve days intervening. What do you mean by some time? A. Up to the 14th and up to the day the will was executed.

Q. Then when these doctors say the disease was progressive they make a mistake—she was not getting worse daily? A. I do not say that. I say I did not notice it. I am not a physician.

Q. I understood you to say that there were six small houses on 8th street? A. Yes, sir.

Q. Do you know what the front depth of them was, just in a general way—how many feet front? A. The front is 74 feet and a fraction.

Q. Each house, I mean. A. That I cannot say. There are six houses.

Q. Of the same size? A. Of the same size, with the ex-
172 ception of one that has a passageway under it for a driveway.

Q. How much do they rent for a month? A. They did rent for $10.30 a month.

Q. Was that net? A. That was net.

Q. After paying the water rent? A. The present rent I cannot say. I have had no connection with the property since the deed was given to Mr. Beyer.

Q. The deed to him included all those houses? A. Yes, sir.

P. J. BRENNAN recalled on behalf of the caveatees.

By Mr. RIDOUT:

Q. Can you tell us where it was that you burned the first paper which you prepared and which you stated on yesterday you did burn? A. After the execution of the present will by Mrs. Beyer I tore the written will up, the will that was written on Sunday afternoon, tore it up. I put it in my pocket, and after I got to my office I burned it up in the grate. I destroyed the will in the presence of Mrs. Beyer.

Q. Tore it up in the presence of Mrs. Beyer? A. Yes, sir.

Q. Did you on the Sunday or any other occasion have any other conversation with Mrs. Johnson about the contents of that first paper? A. No, sir.

Q. Did she request you to make any change in it? A. No, sir.

173 Q. When, if at all, did you ever have any conversation with Mrs. Johnson about any of the wills? A. Never had any conversation with Mrs. Johnson about any of the wills until after the death of Mrs. Beyer, when I requested Mr. Beyer to have Mrs. Johnson and himself come to my office.

Q. When did you first meet Mrs. Johnson? A. I think it was on that occasion. It was on that occasion.

Cross-examination.

By Mr. POE:

Q. Who let you in on the 12th of July, when you first went there? A. I do not remember now.

Q. Do you remember whether it was a colored girl? A. No, sir; I do not. The door was open.

Q. The door was open? A. Yes, sir.

Q. You went right in? A. I think there was some people in the hallway who ushered me upstairs. I do not know just who they were.

Q. Did they know you? A. I do not know.

Q. Did they know your business? A. I do not know.

Q. For whom did you ask them? A. Mrs. Beyer.

Q. And without any question they told you to go upstairs? A. Yes, sir.

174 Q. You do not know who they were? A. No, sir.

Q. Were they male or female? A. I do not remember.

Q. How many were there? A. I do not know; I do not remember.

Q. I think you said that Dr. Smith was upstairs when you got there? A. Yes, sir; that is my recollection.

Q. I am speaking now of my first occasion. A. Yes, sir.

Q. Were you not introduced to Mrs. Johnson on that occasion? A. No, sir.

Q. Were you not introduced to Mrs. Boss then? A. No, sir.

Q. Did you not see her? A. No, sir.

Q. How long was it after you got there that Mr. Louis Beyer got there? A. Before Mr. Louis Beyer?

Q. Junior; yes. A. I really could not tell you; I do not know.

Q. Do you know whether he was there when you got there? A. No, sir; I do not.

Q. You do not know whether you got there first after his visit to your office or he got there and met you? A. No, sir; I do not remember.

Q. You are not sure about that? A. No, sir.

175 Q. I do not mean your office; I mean your house. Of course, he went to your house? A. To my house; yes, sir.

Q. He went to your house and you went to your office and copied some paper and took it with you? A. I am not sure about that. No; I do not think I went to my office.

Q. Then he is mistaken when he said you went to the office and got the paper? A. I think I got the paper at my house.

Q. He said you thought you would go to your office and get the paper? A. He came in the neighborhood of one o'clock, and it was four o'clock when I went there. I had my dinner and went up there.

Q. Do you know whether you had the paper at your house or had

to go out and get it? A. My best recollection is that I had the paper in my house; in my desk. I do not think I went to my office.

Q. Do you remember what kind of paper it was? A. Legal cap.

Q. Do you keep that at your house? A. Yes, sir.

Q. What did you say to the person who let you in and who met you in the hall? A. I said I wanted to see Mrs. Beyer.

Q. Was any objection made to your seeing her at that time on the ground that she was a very sick lady? A. No, sir.

Q. You do not know the person who met you? A. No, sir.

176 Q. You were told to go right up stairs to her sick room? A. Yes, sir.

Q. You went up there and told her that you were the lawyer who was expected to prepare the will for her? A. Mrs. Beyer?

Q. Yes. A. Yes, sir.

Q. Did you tell her your name? A. I think I introduced myself to both Mrs. Beyer and Dr. Smith.

Q. I think you stated in your examination before that Dr. Smith was in the back room? A. He was in the back room after I commenced to talk to Mrs. Beyer.

Q. Then there was somebody with her when you went up there? A. Yes, sir.

Q. Did you know Dr. Smith before? A. I remember never to have seen him. Dr. Smith had known my family.

Q. Had you known him? A. No; I never met Dr. Smith before.

Q. Did you know him by sight? A. No, sir.

Q. As soon as you told your business to Mrs. Beyer he retired then? A. Yes, sir.

Q. Did you know he had an appointment there to meet you for the execution of that will? A. No, sir.

177 By Mr. RIDOUT:

Q. Do you remember at what hour you arrived on Monday? A. I think it was in the forenoon.

Q. Do you remember what time it was on Tuesday? A. I would not be certain about that.

By Mr. POE:

Q. Why was it that the alteration was not made on Monday, when you and Dr. Wade Atkinson went there together? He said for some reason the alteration was not made on that day. What was that some reason? A. Why the alteration was not made?

Q. Why the will was not executed? A. Mrs. Beyer wanted Mrs. Johnson's name put in the will—putting in writing what her verbal instructions were with reference to the first will.

Q. She did not make that objection on Sunday? A. No, sir.

Q. Dr. Smith has testified that Mrs. Beyer cried out, on Sunday, "Where is Helen? Why is her name not in the will?" And you asked her who Helen was. That did not occur on Sunday? A. I do remember an incident of her asking where Helen was. She wanted a drink of water, I think.

Q. Dr. Smith testified that she asked why was not Helen's name in the will, and that that occurred on Sunday, and that the will was not executed on Sunday? A. Mr. Smith is mistaken.

Q. She did execute a will then without Mrs. Johnson's name in it? A. Yes, sir.

HELEN B. JOHNSON, a witness on behalf of the caveators,
178 having been first duly sworn, testified as follows:

By Mr. RIDDICK:

Q. You knew the late Mrs. Mary Beyer, of course? A. Yes, sir.

Q. How were you related to her? A. I was her niece.

Q. What was your mother's name at the time Mrs. Beyer died? A. Elizabeth Maus.

Q. Where have you resided during your life? A. With Mrs. Beyer—wherever she resided.

Q. Do you know how old you were when you first went to live with her? A. Mrs. Beyer told me I was seven months old when she took me.

Q. Where did you remain from the time she took you down to the time of her death? A. With the exception of 20 months, with her.

Q. How long had you been living at her house before her death? A. About 12 years.

Q. What were your duties in the household? A. I took the place at the bar. I did everything that came to hand; helped Mrs. Beyer in everything.

Q. Who kept the house? A. As long as Mrs. Beyer was able she did, and when her health failed I did.

Q. When, if at all, did you first learn of any intention on the part of Mrs. Beyer to make a will? A. The first time there was any conversation that I can recall with Mrs. Beyer about making a
179 will was in May before she died, when Louis was raising the mortgage money. I was in the yard, painting screens, and she came and sat down alongside me, and she told me that she was going to make a will. I asked her not to tell me anything about it. She insisted. She said she was going to leave the property so that Louis could have the control of it and Beyer the benefit of it for life, and then divide it equally between us.

Q. That was in May? A. Yes, sir.

Q. Prior to that time do you know of any statements made by Mrs. Beyer as to what was her intention about a will? A. Her intentions were never to make a will, but after she found that Mr. Beyer would not inherit the property she changed her mind.

Q. Something has been said about a visit Mrs. Beyer made to the country. Where did she go? A. She went 12 miles south of Richmond to the home of my mother-in-law.

Q. Who went with her? A. My daughter and my brother-in-law.

Q. When was the visit to St. George's island? A. The year before, in August.

Q. That was the year before? A. The summer before, in August.

Q. When did Mrs. Beyer return from her visit to the country? A. I brought Mrs. Beyer from Virginia on the first day of July.

Q. When was she compelled to take to her bed on account of sickness? A. Monday or Tuesday after we returned the
180 doctor advised her not to go downstairs, but to stay upstairs, as it weakened her to go up and down the steps.

Q. When did you first learn that she intended to make a will on Sunday, the 12th? A. That morning, I suppose.

Q. Do you remember how you learned it? A. She told me she was going to make one.

Q. Do you remember whether you arranged for any of the witnesses to be present? A. She asked me to ask Dr. Smith. She thought about making a will, and I asked about it, and the doctor said if she wanted the husband to keep the property she should have made the will when she bought the property, and I told her that.

Q. Did she at that time or any other time say what provision she intended to make for her husband? A. At that time?

Q. Or any other time? A. No other than as I told you before, that she would leave the property to Brother Louis, and Uncle Beyer was to have the rent.

Q. Was there any reason given why she did not leave him the property? A. Yes, sir; he was building a boat at the time.

Q. What sort of boat? A. A patent propeller, and she feared that he would put the money all in that.

Q. Did she say that was the reason? A. That is the reason she gave me.

Q. What part did you take in the way of procuring witnesses to the paper that was signed on the 12th, on Sunday? A. I do not know that I took any part. Dr. Smith proposed himself that he wanted to be a witness.

181 Q. Do you know how he learned that she was going to execute a will—whether she told him or you? A. I think I told him.

Q. After she asked you about whether she should make a will? A. Yes, sir; whether she would get better.

Q. And it was in reply to your question that he said he knew it? A. Yes, sir.

Q. Do you remember Mr. Brennan coming there? A. I remember Mr. Brennan being there.

Q. Where were you during the time he was there? A. Downstairs getting supper part of the time, and the other part of the time sitting in the garden with Mrs. Stone.

Q. Did you have any conversation with Mr. Brennan on that occasion? A. No, sir.

Q. Did you see him? A. I saw him walking through the hall.

Q. After the paper had been prepared and before he left did he say anything to you about its contents? A. No, sir.

Q. Was any discussion had between you as to whether your name was in the will or not? A. No, sir.

Q. When did Mrs. Stone arrive on that day? A. She came early in the afternoon; I would say about three or half past.

Q. And what happened? Did she go upstairs as soon as she came? A. She went upstairs and sat in the room with her
182 aunt and me for a while, and then I went down to get supper and she went down with me. Mrs. Stone went down with me, she and her little girl.

Q. She gave her testimony as to what happened afterward. Just state what happened to Mrs. Stone after she came downstairs. A. My little boy played the violin in the orchestra of the Christian Endeavor, and that filled the children with the desire to go to the White House on Sunday, and on Sunday their father said he would drive them down, and on that Sunday afternoon before he drove our children down to the ground he asked Mrs. Stone and her little girl to go, and they went. After he returned he drove Mrs. Stone and her little girl home to Brookland.

Q. She came back? A. He drove her home, and she must have come back.

Q. Did she see Mrs. Beyer the second time? A. Yes, sir; a few minutes only.

Q. When she saw Mrs. Stone that day what conversation transpired between Mrs. Beyer and Mrs. Stone, so far as you recollect? A. Nothing that I can recall—asking how her mother was and different things. I do not know anything particular that occurred that day.

Q. Do you remember a visit made by Mrs. Beyer to Mrs. Le Fevre shortly before Mrs. Beyer went to Virginia? A. Yes, sir; I went with her. My husband, brother-in-law, three children, and I went out to bid Mrs. Le Fevre a good-by before Mrs. Beyer went to the country.

183 Q. Just state what transpired. A. When we arrived there we found Mrs. Le Fevre very sick and several of the neighbors in helping the two daughters do for her. Mrs. Beyer was very sorry to see her so ill, and when she bade her good-by I remember she said, "Liona, I don't know which of us will be the first to go," because Mrs. Beyer was there and Mrs. Le Fevre.

Q. How long after that was it that Mrs. Beyer went to Virginia? A. The next day.

Q. Fanny Perry has testified that on this Sunday afternoon you said to Mr. Johnson that you wished him to take Mrs. Stone away to the Christian Endeavor meeting. What is your recollection about that? A. I did not say so.

Q. She has also testified that on a great many occasions she heard you ask Mrs. Beyer to make a will. What is the fact on that subject? A. She never heard me.

Q. Did you, in point of fact, urge Mrs. Beyer to make a will? A. No, sir.

Q. What do you know from anything Mrs. Beyer told you as to her original intention on the subject of making a will—as to whether she would make one or not? A. She always said she would not make one.

Q. Did she in connection with statements of that kind at any time say what——

Mr. POE: Now ——

Mr. RIDOUT: Let me finish my question.

Mr. POE: We do not want you.

184 Mr. RIDOUT: Strike that out. (To the witness:) What did Mrs. Beyer say in her conversation about Mr. Beyer in case she did not make a will?

A. That he would be her heir by law.

By the COURT:

Q. She gave that as a reason why she would not make a will? A. Yes, sir.

By Mr. RIDOUT:

Q. Do you know when, if at all, Mrs. Beyer learned that Mr. Beyer would not be her heir? A. Do I know it?

Q. Do you know about the time when she learned that? A. Yes, sir; about December before she died.

Q. Then it was in May, you say, that she spoke to you on the subject of making a will? A. Yes, sir.

Q. On the Sunday when the first paper was signed, do you recall whether any conversation was had about a will made on Sunday? I speak now of your personal knowledge. A. I heard her ask Louis Beyer, Jr.

Q. Do you know what she said? A. She asked him if a will made on Sunday would be lawful.

Q. When Mrs. Beyer said that Mr. Beyer would be her heir, what, if anything, did she say about what would become of the property after his death? A. That he would leave it to Louis and me.

Q. Did you at any time importune Mrs. Beyer to make a will in your favor? A. No, sir.

Q. Did you at any time consult with and form any agree-
185 ment with Mr. Louis Beyer, Jr., to do so? A. No, sir.

Q. So far as you have personal knowledge, did Mr. Louis Beyer, Jr., importune or urge his aunt to make a will in his favor? A. No, sir.

Q. On this occasion in May, when you say your aunt spoke to you of her intention to make a will, who introduced the subject? A. She did.

Q. A deed has been offered in evidence from you and young Mr. Beyer to Mr. Beyer, Sr. State the circumstances under which that deed was made. A. I always understood that the property was to be left to Louis and Uncle Beyer was to have the benefit of it, and at Uncle Beyer's death it would be divided between us, but when Uncle Beyer found out that there was a will he became very angry, and he said now he was dependent when he thought he would be always independent. I spoke to Louis about the matter and Louis told me that Mr. Brennan——

Mr. POE: No.

The COURT: No.

The WITNESS: I learned through Mr. Brennan that the property was divided between Louis and me. I said then that before Uncle Beyer should feel that I was trying——

Mr. POE: We are not bound by what she said.

Mr. RIDOUT: Here is a deed offered in evidence and here are the people talking about the execution of it.

The COURT: I do not know about the conversation. The witness can state the reasons that urged her to make the deed.

186 By Mr. RIDOUT:

Q. Tell what reasons impelled you to execute the deed. A. We did not want Mr. Beyer to think we wanted the property. I did that myself, and I told Louis that I would give my——

Q. Never mind about the conversation. A. I proposed to give my share, and Louis——

Mr. POE: Never mind.

The COURT: She has given the reason.

By Mr. RIDOUT:

Q. Fanny Perry says that on the day of the funeral after you returned you went up to Mr. Beyer and told him that there was a will, and he repelled you, and you put your arm around his neck. What about that? A. I did not that day.

Q. When did you first approach Mr. Beyer about the will? A. Wednesday morning.

Q. Where? A. Out on the porch.

Q. Was it so located that you had a free view of the whole porch? A. Yes, sir.

Q. Was Fanny Perry present? A. No, sir.

Q. Who was present, if you remember? A. Mrs. Boss, of Baltimore.

Q. Speaking of Mrs. Boss, what effort have you made to secure her attendance here?

Mr. POE: We object to that.

187 The COURT: Mrs. Boss was a nurse in the house at the time this will was made. There has been no evidence to show that she knew what was going on, except inferences that were drawn. You want to show a reason why you do not produce her as a witness.

Mr. RIDOUT: That is all.

The COURT: I think you have a right to do it, if this witness knows the fact that there is scarlet fever in the family now, as you say, and was at the time you wanted to take the deposition, and go so far as to state it. If somebody read it in a letter or somebody told it here it would be hearsay.

By Mr. RIDOUT:

Q. Have you any personal knowledge on the subject, or do you know what you do know from what somebody told you? A. I do not know positively that there is scarlet fever in the family.

Q. Did you send a messenger to her to procure her attendance?

Mr. POE: We object to that.

The COURT: I think you have a right to show that, and what the messenger reported.

The WITNESS: I sent a message by my uncle to Mrs. Boss, if the scarlet-fever case was not very serious, to be here yesterday morning, and I have not heard one way or the other.

By the COURT:

Q. You do not know whether the message was delivered? A. No, sir; I cannot see him until next Monday.

Mr. POE: I move that all that testimony with reference to Mrs. Boss be stricken out.

188 The COURT: Yes; that may as well go out, because if they produce somebody else it will stand on a different basis.

Cross-examination.

By Mr. POE:

Q. I understood you to say that your mother's name was Elizabeth Maus. I suppose you mean Elizabeth K. Maus? A. Yes, sir.

Q. She is the Elizabeth K Maus who is mentioned in this will and who is to get a legacy of $5,00? A. Yes, sir.

Q. You also had a sister Carrie, I believe? A. I have two sisters and a brother.

Q. They are not mentioned in this will at all? A. No, sir.

Q. What relation was Mrs. Fenton, who is also mentioned in the will as a legatee to the extent of $5,00, to Louis Beyer, Jr.? A. Sister.

Q. And, of course, your first cousin? A. Yes, sir.

Q. You do not know anything about the employment of Mr. Brenman, I believe? A. No, sir.

Q. And I understood you to say that you never met Mr. Brennan to know him until, I think, the 30th of July—until after your aunt's death? A. I do not know that I said that.

Q. I believe you said you saw him at the house, but did not meet him until after—on the 30th of July when he read you the

189 will? A. No, sir.

Q. Was it not on the 30th? A. No, sir; the will was not opened until August.

Q. Did he not invite you to come to his office on the 30th of July, you and your first cousin? A. No, sir; it was on a Tuesday——

Q. I may have misunderstood you. I do not wish to misstate it. I have it on my notes that way. A. But he did not send for me until the Tuesday following, and that would bring it in August.

Q. Mr. Beyer knew the contents of the will before you did? A. The whole contents?

Q. Yes. A. No; I do not think he did. I think he only knew that the property was equally divided between him and me.

Q. What was it you said about the opening of the will? A. It was opened on a Tuesday, I think, following at Mr. Brennan's office, and Mr. Beyer and I were present.

Q. The Tuesday following the funeral?. A. I think that would be the Tuesday following the funeral.

Q. The funeral was on Tuesday, I think. Mrs. Beyer died on Sunday, you know; the funeral was on Tuesday. A. As nearly as I can recall.

The COURT: A week later than the funeral.

Mr. POE: One week later than the funeral. (To the witness:) Mr. Louis Beyer knew from Mr. Brennan what the contents were. Did he communicate them?

A. He certainly did; that the property was equally divided between us or I would not have made the deed.

190 Q. You say she made the will because she ascertained that her husband would not be her heir unless she made the will? A. Yes, sir.

Q. And that was her object in making this will? A. Yes, sir.

Q. You say that Dr. Smith suggested that he should be a witness to the will? A. Yes, sir; he did.

Q. You were asked with reference to a conversation that you had with your uncle about there being a will and you stated that you told him about it out on the porch? A. Yes, sir.

Q. So you did tell him? A. I did.

Q. You answered it, I did not that day. That was in contradiction of what Fanny Perry said? A. Yes, sir.

Q. But you did on some subsequent day, which happened to be the next? A. I did on Wednesday morning.

Q. Not on the day of the funeral? A. No, sir.

Q. Is Fanny Perry's statement as to that substantially correct except as to the time it occurred? A. Is it correct? My uncle Beyer and I were standing on the corner of the porch when I told him and my aunt.

Q. Your aunt, Mrs. Boss, you mean? A. Yes, sir.

Q. What did he say? Was he surprised? A. The first
191 thing that led me to tell him of the will was he said, Now this property will have to go into the orphans' court and there will be all that expense, and if she had made a will it would have been saved. I said "Uncle Beyer, there is a will." He asked me if I knew the contents of it and I told him no.

Q. You and your uncle Beyer and Louis Beyer did not live very happily together after this will was discovered? A. No, sir.

Q. And you had some disputes with reference to the property, I believe? A. Yes, sir.

Q. When did those disputes begin? A. When outside influence began.

Q. Did they begin about the 31st of July? A. No, sir. After Uncle Beyer got the deed he was satisfied for quite a while.

Q. He was not satisfied before he got the deed? A. We gave it to him so quickly he did not have time to be dissatisfied.

Q. It was very unpleasant even for that one day? A. It was not for one day. He did not know that I had anything to do with it—did not know that I was in it.

Q. Did not know what? A. That I was mentioned in the will, and I did not know it myself.

Q. Did he know that your cousin, Louis Beyer, was? A. Did he know it?

Q. Yes. A. When I told him.

192 Q. How was it that Mr. Beyer, Sr., had made it so unpleasant for you in consequence of the will that you executed him this deed? A. His unpleasantness did not come in annoying me in any way, but he seemed to be hurt that he did not get the property. That is where the annoyance came in—to see him so much low-minded, because he was not left anything.

Q. Mrs. Johnson, I believe you have taken a quitclaim from your mother for her interest? A. I have.

Q. I suppose you have paid these other legacies? A. I do not understand your question.

Q. I say I suppose you and Mr. Louis Beyer, Jr., have paid these other legacies? A. What are they?

Q. There is a legacy of $5.00 to Mrs. Lefevre and Mrs. Fenton? A. Oh, Mr. Beyer was the administrator; I had nothing to do with that.

Q. You do not know whether they were paid or not? A. You ask Mr. Beyer.

Q. She talked to you about making a will in May? A. Yes, sir.

Q. And that, as I understand your language to be, was when Louis was raising the money on a mortgage? A. Not raising money on a mortgage, but getting money to pay the mortgage.

Q. To take up one mortgage? A. Making a new mortgage to take up another.

Q. He was negotiating that business for your aunt? A. Yes, sir.

193 Q. Was that in consequence of her ill health? A. No, sir; that was for the houses on H street. After Louis got into the real-estate business he attended to the business, paid taxes and everything.

Q. You said that you lived in the house ever since your infancy, almost? A. Yes, sir.

Q. You married Mr. Atley Johnson, I believe? A. Yes, sir.

Q. And you and he have how many children? A. We have three.

Q. The oldest is how old? A. Will soon be 16.

Q. He was under 13 when this will was made? A. About 12.

Q. Did you happen to know where the money came from which Mrs. Beyer had and with which this property was bought?

Mr. RIDOUT: I do not know that that will throw any light.

The COURT: It might. It is proper to ascertain from what source the property came.

The WITNESS: I understood from Mrs. Beyer.

Mr. MACKEY: To ascertain where the money came from that bought this house—that does not enlighten any issue in this case.

The COURT: It might. It is a circumstance which the jury might consider.

Mr. MACKEY: We take an exception.

(By Mr. POE:)

Q. Answer the question. A. The money was made in business.

Q. Together, or was it Mrs. Beyer's business? A. They lived together.

194 Q. Was the business Mrs. or Mr. Beyer's? A. I do not say about that.

Q. Do you know anything about any funds that he received as a pension? A. I know that Mr. Beyer received a pension.

Q. How much was that? A. I do not know that.

Q. Was it not quite a large sum? A. You will have to ask him. I do not know.

Q. You heard him say that he received it? A. I heard him say so. I never saw the money, but I heard him say so.

Q. Did you hear Mrs. Beyer say so? A. Did I?

Q. Yes. A. No, sir.

Q. Do you happen to know what was the cost of building this house on Brightwood avenue? A. No, sir.

Q. About how much did it cost? A. Mr. Beyer attended to that himself—Mr. Beyer, Sr. I was a school girl then. He paid all the bills.

Q. You are sure that on the 31st of July, 1896, Mr. Beyer, Sr., was dissatisfied with the contents of this will? A. I cannot say that he was dissatisfied with the contents, for he did not know them.

Q. And neither did you? A. No, sir.

Q. Why was it that he made things so unpleasant at that time? A. Because there was a will.

195 Q. He had not been consulted about the will at all, had he? A. No, sir.

Q. He was not present at the execution of either of them? A. None of us were.

Q. He was not in the house, was he? A. No, sir.

Q. You were, were you not? A. I was there.

Q. Was not Louis Beyer present on the occasion of the execution of the will, on Sunday—not in the room, but in the house? A. He was in the house.

Q. He was not on the outside, was he? A. No, sir.

Mr. WOLF: On behalf of Cohen & Wolf, trustees, I desire to offer this deed from Mr. Beyer to us to secure a trust. That is our connection with the case.

Mr. POE: I do not see that that sheds any light on it.

The COURT: What does that deed to you have to do with it?

Mr. WOLF: It shows that we are made parties to this suit.

Mr. RIDOUT: They are defendants in the equity suit.

The COURT: The object of that equity suit is to declare this will void.

Mr. POE: And, of course, that mortgage would fail.

The COURT: Are they brought here in these issues?

Mr. POE: Yes.

196 The COURT: Inasmuch as they are parties, I think the deed may come in showing why they are here. Of course it has no bearing upon the issue. I should doubt whether Wolf & Cohen should have been made parties to these issues. It is not necessary to bring them here as parties.

Mr. WOLF: I want it to go in for the same reason as the deed offered by the other side. If it goes in for one purpose it is in for all purposes.

The COURT: No. That is the only purpose for which that deed can go in evidence.

Have you any rebuttal, Mr. Poe?

Mr. POE: Nothing, except that which your honor reserved in reference to the caveat. That is not directly rebuttal. That was in reference to the right to offer in evidence the caveat. We do not want to press that very strongly on the court. I have not looked at the authorities except a little.

The COURT: I did last night. I wanted to see what the evidence would show the relations were between these parties, and I am inclined to think it is not admissible, and I am inclined to think also that I shall instruct the jury in the end to disregard the evidence that was admitted yesterday in reference to the admissions of Louis Beyer, Sr.

I think the legal way is to reject your offer of that caveat, and also to rule out the evidence of the declarations of Louis Beyer, Sr., upon the point of the incapacity of his wife to make this will, and of the undue influence.

Mr. POE: The exceptions will go to it.

The COURT: Yes; it is well to save your exception to my overruling your offer, and also the exception to refusing to admit. Is that all?

Mr. POE: That is all.

197 The following prayers were offered by the caveators and caveatees respectively, which were acted upon by the court as indicated at the foot of each:

Prayers for Caveators.

1. Unless the jury believe that at the time of the execution of the paper-writing purporting to be her last will Mary Beyer, the testatrix, fully understood the nature of the business in which she was engaged, and had sufficient capacity to make a disposition of her

estate with judgment and understanding in reference to the amount and situation of her property and the relative claims of different persons who were or should have been the objects of her bounty, and understood the manner in which she disposed of it, then she had not sufficient mental capacity to make a valid last will, and the verdict must be for the plaintiff on the first issue. The provisions of said paper may be considered by the jury in deciding the question of mental capacity of the testatrix to make a valid last will, and if the jury should believe that the said paper in its provisions is unjust or injudicious, that is a fact to be considered with the rest of the evidence, but is not of itself sufficient ground for finding that the testatrix had not sufficient capacity to make a valid will.

2. A testatrix should enjoy full liberty and freedom in the making of her will, and possess the power to withstand all contradiction and control. The degree of importunity or undue influence which deprives the testator of his free agency, which is such as he is too weak to resist, and renders the instrument not his free and unconstrained act, is sufficient to invalidate it, not in relation to the person alone by whom it is procured, but as to all others who are
198 so intended to be benefited by his undue influence.

3. Undue influence which will avoid a will means unlawful influence. All influence which may be used to induce a person to make a will in a given way is not unlawful. It is not unlawful for any person to suggest to the testatrix to make a will in a particular way, in favor of the person or persons so suggesting, or any other, and to present arguments and reasons giving support to such suggestion. Such suggestion and argument addressed to the judgment and reasons of the testatrix for the purpose of influencing her as to the propriety thereof are not unlawful, and therefore not undue, although they may have the effect of influencing her to make a will different from what she otherwise would have made, so long as the will is the direct act of her own deliberate judgment. Influence to be undue, and therefore unlawful, is that degree of importunity which overcomes and destroys the judgment and will of the testatrix and induces her to make a will she did not desire to make, in order to rid herself of such importunities.

Undue influence is a relative term. The degree of influence or importunity which might be undue and unlawful in one case might not be in another. It may depend in some degree upon the character and condition of the testatrix's mind in the particular case. It might require a much greater degree of importunity or influence to overcome one mind than another, even when each is in a healthy condition. It may require more to overcome the same mind when in a perfectly healthy and strong condition than when it is somewhat weakened by age, disease, or other cause.

In considering the issue of undue influence in this case it will be proper for you to consider the character and condition of Mary Beyer's mind at the time of making the alleged will; whether it was, as you may find it from the evidence, firm and strong
199 and not likely to be readily influenced by others, or whether weak and vacillating and susceptible to be readily controlled

by others; and the character of the influence, if any, that was exercised over her in relation to the making of her will and to the acts and circumstances in relation thereto shown in evidence; and if you shall find from all the evidence that she was induced to make a will by importunities of any person or persons, of such character that they overcame her will and induced her to execute a paper called a will contrary to her judgment and desire, you should answer that issue in the affirmative; but if you shall find from the evidence that the said paper was in accordance with her judgment and desire, although such judgment and desire may have been formed in pursuance of reasonable and moderate suggestions made to her by others, you should answer that issue in the negative.

4. The plaintiff prays the court to instruct the jury that undue influence can generally be established by circumstantial testimony only.

Prayers of Caveatees.

1. If the jury believe, in answer to the second question propounded, that the testatrix, Mary A. Beyer, executed the alleged will in all its provisions of her own free will and volition, so that it expresses her own wishes and intention, and that she was not restrained or coerced of others, in making her will, to act against her own desire and intention as regards the disposition of the property or any part of it, then they will answer the said second question No. (Granted.)

2. The burden of proof is upon the contestants to show that the making of the will was obtained by undue influence, and in order to establish that fact it must appear to the satisfaction of the
200 jury, by a preponderance of the evidence, that undue influence was employed; and to constitute undue influence it must appear to be such influence or restraint as caused the execution of the will by the decedent against her own preference or desire in the matter. Mere advice or persuasion to induce a testatrix to make a will or influence the disposition of her property by will is not undue influence. (Granted.)

3. That in this case, though the jury may believe from the evidence that the said Louis Beyer, Jr., or Mrs. Helen Johnson or either of them did use arguments and importunities to influence the deceased in the making of the will in question, still this fact will not affect the validity of the will if the jury further believe from the evidence that such arguments and importunities, if any were made, did not deprive the deceased of her free agency or prevent her from doing as she pleased with her property, even though the will might not have been made in all its provisions as it is but for such arguments and persuasion. (Granted.)

4. That in determining the question of undue influence the jury have the right and it is their duty to take into consideration the provisions of the will itself, in connection with all the other evidence in the case bearing upon the question whether the testatrix was coerced by threats or otherwise into making the will in question, or whether she in her lifetime, of her own will and volition, made and

executed the said will so that it expresses her own wishes and intentions. (Granted.)

Counsel for the respective parties having argued on the facts and the law of the whole case——

The COURT: Gentlemen of the jury, your duty in this case involves your making answer to three interrogatories. The
201 first one reads this way:

"First. Was the said Mary Beyer at the time of the alleged execution of the paper-writing bearing date the 14th day of July, A. D. 1896, and purporting to be her last will and testament, of sound and disposing mind, memory, and understanding, and capable of executing a valid deed or contract?"

The second one reads:

"Was the execution of the said paper-writing bearing date the 14th day of July, 1896, purporting to be the last will and testament of the said Mary Beyer, procured by fraud, circumvention, or undue influence practiced or exercised upon the said Mary Beyer by Louis Beyer, Jr., Helen B. Johnson, or by either of them or by any other persons?"

And the third interrogatory reads in this way:

"Were the contents of the paper-writing bearing date July 14th, 1896, and purporting to be the last will and testament of the said Mary Beyer, known to her at the time of the alleged execution thereof?"

You will notice that the first relates to the question of the condition of Mary Beyer's mind on the 14th day of July, 1896, when this paper-writing, said to be a will, was executed by her, and the second relates to the question of whether she was induced to execute that paper by fraud or undue influence of Louis Beyer, Jr., or Helen B. Johnson or any other person or by them and some other persons combined. The third relates to the question of whether at the time she signed the paper she knew and understood the contents of it.

You will observe that there is no question raised as to the fact that she did sign the paper. That is admitted.

Now, upon the first interrogatory, indeed upon all of them, the important time to which your mind should be directed is
202 the 14th day of July, 1896, the day on which the paper was executed. You are to determine the state of Mary Beyer's mind on that day. You are to determine whether undue influence was used on that day, not on some other day. You are to determine whether she knew the contents of that will on that day. In other words, that is the date to which your mind should be directed in its final conclusion, but you are not confined to that date in considering the evidence. It is proper and right that you should consider the state of her mind both before and after the time she executed this paper. In order to determine what the state of her mind was on that day it is also proper that you should consider whether undue influence was used prior to that day, in order to determine whether

it was used on the day and at the time the will was executed. You are therefore to consider all the evidence that you have—all the acts and transactions and circumstances proved in the case—regardless of the time they occurred, but you are to consider them as bearing upon and pointing to the particular day or date to which your inquiry relates, the 14th day of July, 1896.

To illustrate what I mean by that, if you should find that a few days after this will was executed this woman was incompetent to make it, that alone would not justify you in finding that she was incompetent on the 14th day of July, 1896; but the fact that she was incompetent a few days afterward, taken together with other evidence, might satisfy your mind that she was incompetent on that day. But if she was incompetent the very next day, but was competent on the 14th, then you should find her competent; and so with regard to undue influence. If you should find from the evidence that undue influence was exerted over her a day or two days or a week or at any other time prior to the execution of this paper,
203 that alone would not justify you in finding that on the 14th day of July, 1896, she executed the will under the operation of undue influence; but if you should find that undue influence existed prior to that day that would be a circumstance to consider whether it did or did not exist on the 14th day of July, 1896, and the fact, if you should find it to be a fact, that it did exist prior, taken together with other facts and circumstances in the case, might satisfy you that it did exist on the 14th of July, 1896, so that the question you will put to yourselves in relation to it is, was she competent on the 14th day of July, 1896? Was undue influence exercised over her to procure this will when it was made on the 14th day of July, 1896? That is the real question that you are to determine; but, as I have said before, you are entitled to and should consider all the evidence, facts, and circumstances of whatever date relating to that subject and focus it, so to speak, upon that particular date.

The principles of law that are to govern you in determining these questions are well settled. You will notice that there is no controversy among counsel as to what they are, only the particular language in which the principles shall be couched, and I have granted instructions prepared by the counsel for each side covering pretty much all the law of the case. I now read you one relating to the question of mental capacity to make a will, which instruction was prepared by the counsel for the complainant, the parties assailing the will, and it is in this language:

"Unless the jury believe that at the time of the execution of the paper-writing purporting to be her last will Mary Beyer, the testatrix, fully understood the nature of the business in which she
204 was engaged and had sufficient capacity to make a disposition of her estate with judgment and understanding in reference to the amount and situation of her property and the relative claims of different persons who were or should have been the objects of her bounty, and understood the manner in which she disposed of it, then she had not sufficient mental capacity to make a valid last will, and the verdict must be for the plaintiff on the first issue."

That part of the instruction defines as nearly as language can the condition or strength of mind that enables a person to make a will. A law of this District says that a person to make a will must have the same capacity that is necessary to make a valid deed or contract—that is to say, the party must have mind enough to grasp the subject-matter of the thing to be contracted about, to determine for themselves what sort of contract they want to make; as applied to a will, what sort of disposition they desire to make of the property. They must have strength of mind enough to be able to recollect their relations, if they have any, who they are, what their relations to them in life have been, and what expectations they might reasonably have or receive from them, and to determine for themselves what disposition they desire to make of their property. A person having that condition of mind is capable of making a will; but it must come up to that standard in order to be capable, and unless this testatrix at the time she executed this paper had sufficient mental capacity to remember or know who her relatives were, her friends were, what property she had, the extent of it and situation of it, and form in her own mind a conclusion as to the disposition she desires to make of it, then she is not competent to make a will. If she did have that degree of mental competency, she was competent. Everybody agrees that is the law. It is for you to consider all the evidence in the case tending to bear upon her mental capacity at the time and to determine from it all whether in your judgment she had the mental capacity requisite to enable her to make a valid deed or contract, and therefore a valid will. If you find from the evidence that she had, you will answer that first interrogatory in the affirmative.

Mr. POE: No.

The COURT: Yes. If you find that she had sufficient mental capacity to make a will at the time she signed this document, then you will answer the first interrogatory in the affirmative; but if you find that she had not sufficient mental capacity to make a will, then you will answer it in the negative. That disposes of that issue.

But there is another clause or paragraph to this instruction that bears upon this question of evidence, and I will now read that to you:

"The provisions of said paper may be considered by the jury in deciding the question of mental capacity of the testatrix to make a valid last will, and if the jury should believe that the said paper in its provisions is unjust or injudicious, that is a fact to be considered with the rest of the evidence, but is not of itself sufficient ground for finding that the testatrix had not sufficient capacity to make a valid will."

In other words, gentlemen, upon that question of mental capacity of a person you have, as you do upon many and most questions, two classes of evidence: You have, first, the direct evidence of the witness in relation to her mental capacity, giving their opinions as to her mental capacity; you heard several; I do not know how many; it is immaterial, so far as I am concerned; it may be for you to de-

termine; but several witnesses who had more or less oppor-
206 tunities to observe her have given you their opinions, together with their reasons upon which they base those opinions, as to the mental capacity of Mrs. Beyer at the time she made this will; that is proper evidence for you to consider; but their opinions are not binding upon you, because if they were you would have to find both ways here. They are not binding upon you, nor is the opinion of any particular witness. The good of those opinions is and the weight you should give them depends very largely upon the opportunities that each witness had to observe this woman and form an opinion about her mental capacity; but it does not depend altogether upon that. Much sometimes depends upon the intelligence of the witnesses, their capacity in observing a person's actions and hearing their conversation. Sometimes, I say, much depends upon the capacity of the witness to form an accurate opinion; so that you have to take all those things into consideration, and sometimes there is bias. I do not know that any of the witnesses who gave their opinions here were biased, but sometimes they are and you have to look at them well. Such opinions you are to consider and give them such weight as you see fit; and then the condition of health and all that is to be taken into consideration, bearing in mind that a person may be very ill and yet have sufficient mental capacity to make a will, but most kinds of diseases affect, especially in the last stages, the mind more or less, and it is a question for you whether the disease in this woman had progressed so far as to affect her mind, and, if so, to what extent, and together with other things her mind had become so weakened at the time she made this will as to render her incapable of making one, and the circumstance that this last instruction refers to is the contents of this paper itself. It says you
207 may consider the contents as bearing upon this mental capacity. Take a person whom you know well; you know his relatives; you heard him talking about making his will; you know what his intentions are as to the disposition of his property and all that, and he dies suddenly, and a will turns up very different from what you would have expected from that person. There is a circumstance that would have a tendency to show that something was wrong, either that person was not in his right mind, the mind had weakened, or something had happened. That is what this means here. The evidence here shows you to a certain extent the life and relations of this woman. You will be able to form, possibly, an opinion as to the kind of will you would have expected from her. I do not mean by that the kind of will you would have made for her if you were going to make one, but learning of her condition in life and her property you will be able to form, possibly, an opinion. I do not say you will as to what sort of will you would expect from her. If you come to look at this will and its contents and find it to be different from what you would have expected from such a woman in her condition in life, why, that is a circumstance that bears upon the question of mental capacity, bears unfavorably, but, on the contrary, if the will, when you come to look into it, is natural, what

you would have expected from her, why, then, it is still a circumstance, but it is a circumstance in favor of mental capacity instead of against it. That is what that instruction means.

We pass from the question of mental capacity to the one of undue influence, and upon that question I will first read you an instruction prepared by the counsel for the complainants, the parties assailing the will. It reads in this way:

208 "A testatrix should enjoy full liberty and freedom in the making of her will and possess the power to withstand all contradiction and control. The degree of importunity or undue influence which deprives the testator of his free agency which is such as he is too weak to resist and renders the instrument not his free and unconstrained act is sufficient to invalidate it, not in relation to the person alone by whom it is procured, but as to all others who are so intended to be benefited by his undue influence."

The latter part of that means if one person uses undue influence in obtaining the will, it will invalidate the will not alone in relation to that person, but to other persons who would be benefited by it, although they might be innocent persons.

I now read you some instructions upon the question of undue influence prepared by the counsel for the defendants—that is, those claiming under the will. The first one reads in this way:

"If the jury believe in answer to the second question propounded"—

That is, the one of undue influence—

"that the testatrix, Mary Beyer, executed the alleged will in all its provision- of her own free will and volition, so that it expresses her own wishes and intentions, and that she was not restrained or coerced of others, in making her will, to act against her own desire and intention as regards the disposition of the property or any part of it, then they will answer the said second question, No."

The second prayer for the defendants reads in this way:

"The burden of proof is upon the contestants"—

That is, complainants—

209 "to show that the making of the will was obtained by undue influence, and in order to establish that fact it must appear to the satisfaction of the jury, by a preponderance of the evidence, that undue influence was employed, and to constitute undue influence it must appear to be such influence or restraint as caused the execution of the will by the decedent against her own preference or desire in the matter. Mere advice or persuasion to induce a testator to make a will or influence the disposition of her property by will is not undue influence."

The third one on behalf of the defendants reads this way:

"That in this case, though the jury may believe from the evidence that said Louis Beyer, Jr., or Mrs. Helen Johnson, or either of them, did use arguments and importunities to influence the deceased in the making of the will in question, still this fact will not affect the validity of the will, if the jury further believe from the evidence that such arguments and importunities, if any were made, did not deprive

the deceased of her free agency or prevent her from doing as she pleased with her property, even though the will might not have been made in all its provisions as it is but for such argument and persuasion."

The fourth one on behalf of the defense is in this language:

"That in determining the question of undue influence the jury have the right, and it is their duty, to take into consideration the provisions of the will itself, in connection with all the other evidence in the case bearing upon the question whether the testatrix was coerced by threats or otherwise into making the will in question, or whether she in her lifetime of her own will and volition made
210 and executed the said will so that it expresses her own wishes and intentions."

There you see that fourth instruction relates to the question of evidence and authorizes, permits, and requires you to consider the contents of the will as a circumstance bearing upon the question whether undue influence was used or not, and what I said in relation to the question of mental capacity applies here, and I need not repeat it.

There is another instruction upon this same question of undue influence prepared by counsel for complainants, which I now read you. It is substantially a repetition of what I have already given you, but in different language. I think, perhaps, it is well enough to read it, that you may, each one of you, understand the definition of the term undue influence:

"Undue influence which will avoid a will means unlawful influence. All influence which may be used to induce a person to make a will in a given way is not unlawful. It is not unlawful for any person to suggest to the testatrix to make a will in a particular way in favor of the person or persons so suggesting or any other, and to present arguments and reason giving support to such suggestions. Such suggestion and argument addressed to the judgment and reason of the testatrix for the purpose of influencing her as to the propriety thereof are not unlawful, and therefore not undue, although they may have the effect of influencing her to make a will different from what she otherwise would have made, so long as the will is the direct act of her own deliberate judgment. Influence to be undue, and therefore unlawful, is that degree of importunity which overcomes and destroyes the judgment and will of the testatrix and induces her to make a will she did not desire to make in order to rid herself of such importunities.

Undue influence is a relative term. The degree of influence
211 or importunity which might be undue and unlawful in one case might not be in another." It may depend, in some degree, upon the character and condition of the testatrix's mind in the particular case. It might require a much greater degree of importunity or influence to overcome one mind or another even when each is in a healthy condition. It may require more to overcome the same mind when in a perfectly healthy and strong condition than when it is somewhat weakened by age, disease, or other cause.

"In considering the issue of undue influence in this case it will

be proper for you to consider the condition of Mary Beyer's mind at the time of making the alleged will, whether it was, as you may find it from the evidence, firm and strong and not likely to be readily influenced by others, or whether weak and vacillating and susceptible to be readily controlled by others, and the character of the influence, if any, that was exercised over her in relation to the making of her will and to the acts and circumstances in relation thereto, shown in evidence, and if you shall find from all the evidence that she was induced to make a will by importunities of any person or persons of such character that they overcame her will and induced her to execute a paper called a will contrary to her judgment and desire, you should answer that issue in the affirmative."

That is the law on the question of undue influence.

"But if you shall find from the evidence that the said paper was in accordance with her judgment and desire, although such judgment and desire may have been formed in pursuance of reasonable and moderate suggestions made to her by others, you should answer that issue in the negative."

There is one more — upon the question of undue influence
212 asked by the counsel for the complainants, and it is—

"The jury are instructed that undue influence can generally be established by circumstantial testimony only."

There are sometimes cases where undue influence is used where you have direct proof of somebody who was present and heard and witnessed improper persuasions and all that; but it is rare that you find cases of that kind. Generally undue influence has to be proved by circumstances. One of the circumstances we have mentioned—that is, you find a will very different from what you expected it from a person. Do not misunderstand—not a will differently from what you would have made. That raises no presumption. In order to raise a presumption or to have a circumstance worth anything as evidence the will must be different from what you would have expected from a party, considering the history and condition in life and relation in life of that party and family. That is one circumstance. If this will is different from the one you would have expected from that woman, that is a circumstance. If, on the contrary, it is a will that you would have expected from her, that is another circumstance. You are to take that circumstance, with all the circumstances which the evidence establishes, to your mind and ask yourself the question whether on this 14th day of July, 1896, when this will was executed, the woman did it under the influence of improper persuasion, so that it was not her act and she did not want to do it, but was persuaded to do it for the purpose of getting rid of importunities.

Now, gentlemen, the third issue requires little or no attention, because if you should find on the first issue that she had not mental capacity to make the will, why you would have to answer
213 the third the same way—that is, that she did not know the contents of the will; so that the way in which you answer the first will dictate the way in which you should answer the third in-

terrogatory. If she had mental capacity enough to make the will and signed it, the law presumes that she knew its contents. There is nothing here to show to the contrary, so that the third interrogatory will need no separate consideration from you. You will answer the third in accordance with the way you answer the first. If you answer the first no, you answer the third no; if you answer the first yes, you answer the third yes. One follows the other.

This is an important case, and, like all others, the parties here are entitled to your deliberate and careful judgment upon the evidence in the case. You have noticed that there is more or less feeling; always is in cases of this kind. It is natural to look for it. Family difficulties over property generally engender feeling, and we who have to decide the question of whether it is a will or not ought not to imbibe any of that feeling from one side or the other, but ought to approach the question with candor and decide in accordance with the evidence. Of course, every person has the right to make a will and to dispose of his or her property according to his or her notions. Whether that will agrees with your notions or mine is not the question. We have to try it all. We have to try the question of whether they did it—whether they had the capacity to do it or did do it, or whether they lacked the capacity and were induced to do it by somebody else. That is the question.

I do not know of anything else.

In returning your verdict you write after each one of the interrogatories "yes" or "no," in accordance with your judgment.
214 That is what you have to do. Elect a foreman when you go out, and then proceed with your deliberations. When you shall have arrived at a verdict let your foreman write after each one of these interrogatories as you may find.

Mr. RIDOUT: Are they entitled to take the will with them?

The COURT: I should say not without consent.

Mr. POE: Are they entitled to the granted instructions?

The COURT: That never has been done here, and I should hesitate to do it unless by consent.

Mr. POE: I would prefer that they should have the instructions.

Mr. RIDOUT: I object to it, and I do it in the interest of the jury.

The COURT: It seems to me that the jury should remember the instructions as to the law without reading them. As it has not been the habit to do it here, I would rather not do it.

Mr. MACKEY: Judge James held in the case of General Sherman that the prayers could not be sent out.

Mr. POE: It can be done by consent, and I would prefer that it be done.

The COURT: If they have any difficulty they can return in the court.

The jury retired, and, after an hour spent in deliberation, returned to the court-room for further instructions.

The CLERK: Gentlemen of the jury, have you agreed upon a verdict?

The FOREMAN (Mr. PINCHBACK): No. Your honor, a controversy has arisen among the jurymen as to the effect of the instructions of the court relative to undue unfluence. We ask that you give us fuller instructions on that point.

In order that you may understand the difficulty that we
215 labor under, I will say that some of the jurymen have the impression that the importunities of Louis Beyer, Jr., and Mrs. Helen Johnson, if made either affectionately or by persistence, are undue influence. There are some who think that that was not undue influence, and on that point we are at outs, and we desire to have further information from you upon that point.

The COURT: If the will was brought about by the influence of affection of Mrs. Beyer for her nephew and niece—if she made the will in their favor because of her affection for them, although they may have persistently cultivated her affection, that would not be undue influence. But if the will was brought about by their persistent importunities upon her to make a will in their favor—if they were so continuous and earnest and annoying that she, in her condition, yielded to them and made a will as they desired it, in order to get rid of their importunities, a will different from what she wanted to make, then it was undue influence. I do not know that that is an answer to your question, but I come as near to it as I can.

The FOREMAN: I think that is the information we desire. We will retire.

The COURT: When you return, the officer will take you to the court-room on the other side of the hall.

The jury retired.

After an absence of an hour, the jury returned to the court-room.

The CLERK: Gentlemen of the jury, have you agreed upon a verdict?

The FOREMAN (Mr. PINCHBACK): No, your honor. After a very deliberate consideration of the subject referred to us by these interrogatories I find the jury divided, hopelessly so.

The COURT: Not so now. Some twelve men are to decide
216 this case. I do not believe we could get twelve better men in the District of Columbia to decide it than you are.

The FOREMAN: If you will permit me to say, that is the difficulty; we have apparently twelve intelligent and self-willed men.

The COURT: Yes; do not yield your conscientious conviction; but there is a right and a wrong—I mean the evidence proves one or the other. See what the fact is and decide it, and when you shall have arrived at a verdict write the answers there, no or yes, as the case may be, to each one of the interrogatories and then turn the paper over and let each juror write his name on the back of it. Then put it in an envelope, let the foreman take it and keep it until Monday morning at 10 o'clock, and then bring it into court. You will remain in your room and not separate until you shall have decided the case, written the answers to the interrogatories, and signed your name on the paper. So soon as you shall have done that, then you will be at liberty to separate and go to your homes.

The FOREMAN: I understand by that that we must agree, yes or no, unanimously on each proposition?

The COURT: Yes or no, unanimously on each of the interrogatories, and as an evidence that each once has assented to the answer he is to write his name on the back of the paper. Then the foreman will take that paper and put it in an envelope, seal it, and keep it in his possession and let nobody see it or handle it until Monday morning at 10 o'clock. Stay in your room. There is a more convenient and comfortable one upstairs, where you can get more light. Take your time; there is no hurry; but do it as quickly as you can.

The FOREMAN: Your honor, I am sure you will keep us
217 until Monday morning.

The COURT: I am quite satisfied that you will be out of there by bedtime. When you come back Monday morning, instead of coming to this room go to criminal court No. one, on the south. We are to try a murder case there, because it is more convenient to the marshall to have it tried there than here. I ask you to come to that room. We will not trouble you to come back here Saturday morning.

The FOREMAN: We are not to leave the room until after we have reached a conclusion?

The COURT: You are not to separate, except that one of you may want to go out. If any of you want a lunch, let the messenger know and he will send out and get it.

The jury retired, and, the court having adjourned, a sealed verdict was handed in on Monday following.

In the Supreme Court of the District of Columbia.

LE FEVRE vs. BEYER. } Equity. No. 20324.

On issues to the circuit court.

I, Robert S. Boswell, being duly sworn, depose and say that I was employed by all the parties to this cause, through their respective attorneys, to take down stenographically the testimony and proceedings had on the trial of the issues sent by the court, sitting in equity, for trial by jury in the circuit court; that I accordingly attended said trial and took down the testimony and proceedings aforesaid stenographically and afterward reduced the same to typewriting, and that the annexed 196 pages constitute the same and are a true, correct, and full report thereon.

218 I further depose that I am in no way interested in the result of this cause.

ROBERT S. BOSWELL.

Signed and sworn to before me this 26th day of February, A. D. 1900.

ALBERT HARPER,
Notary Public.

[SEAL.]

Answer of Helen C. Fenton to Bill, &c.

Filed Mar. 30, 1900.

In the Supreme Court of the District of Columbia.

CAROLINE LE FEVRE
vs.
LOUIS BEYER ET AL. } No. 20324. Equity.

To the honorable the justice of said court:

The separate answer of Helen C. Fenton to the bill of complaint herein and to the petition by which she is made a party defendant to this cause respectfully shows:

1. That this defendant admits the allegation of the first paragraph of said bill to be true.

2. That this defendant admits the allegations of the second paragraph of said bill to be true.

3. That this defendant has no personal knowledge of the allegations of the third paragraph of said bill, and can therefor- neither admit or deny the same.

219 4. That neither can this defendant admit or deny the allegations of the fourth paragraph of said bill, she not having any personal knowledge concerning the matters therein alleged.

5. That this defendant admits the allegations of the fifth paragraph of said bill to be true.

6. That this defendant admits the allegations of the sixth paragraph of said bill to be true, excepting this, that this defendant is also one of the heirs-at-law and next of kin of the decedent, Mary Beyer, and as such is also a distributee of the estate of said deceased, although not so mentioned in said paragraph.

7. That this defendant believes the allegations of the seventh paragraph of said bill to be true.

8. That this defendant, not having any personal knowledge concerning the allegations of the eighth paragraph of said bill, can neither admit or deay the same, although she has been informed, and believes it is the fact, that the will mentioned in said paragraph was set aside by a jury sworn to try certain issues framed thereon.

9. That this defendant believes the allegations of the ninth paragraph of said bill to be true.

10. That this defendant, having no personal knowledge upon the matters set out in the tenth paragraph of said bill, can neither admit or deny same.

11. That this defendant admits the allegations of the eleventh paragraph of said bill to be true.

220 12. That this defendant is without knowledge of the matters alleged in paragraph twelve of said bill, and can accordingly neither admit or deny same, but she believes the estate of said deceased is of considerable value.

13. That, respecting the allegations of the thirteenth parapraph of said bill, this defendant submits the record will speak for itself thereon.

14. That this defendant, not having personal knowledge thereon, neither admits or denies the allegations of the fourteenth paragraph of said bill, but the record will, she is advised, attest the truth or falsity of said allegations.

15. That for an answer to the fifteenth paragraph of said bill this defendant refers to the answer above and asks that it be taken as her answer to this paragraph.

16. That respecting the allegations of the sixteenth paragraph of said bill, this defendant submits the record will attest the truth or falsity of said allegations.

Answering further, this defendant says that the will of the decedent, Mary Beyer, was set aside on or about the 11th day of December, A. D. 1879; that no appeal, according to the record, has been taken from said finding; that this defendant is therefore a distributee of the estate of said deceased, and that respecting her distributive interest therein this defendant submits her rights to the protection of the court for such decree as may be equitable and just in said premises.

HELEN C. FENTON.

ALEXANDER H. BELL,
Sol'r for Helen C. Fenton.

221 DISTRICT OF COLUMBIA, *ss:*

I, Helen C. Fenton, on oath depose and say that I have heard read the foregoing answer by me subscribed and know the contents thereof; that the facts stated therein upon my personal knowledge are true and those stated upon information and belief I believe to be true.

HELEN C. FENTON.

Subscribed and sworn to before me this 30th day of March, A. D. 1900.

J. R. YOUNG, *Clk,*
By R. J. MEIGS, JR., *Ass't Clk.*

Replication.

Filed Apr. 2, 1900.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

CAROLINE LE FEVRE
vs.
LOUIS BEYER ET AL. } Equity. No. 20324.

The complainant joins issue on the answer of the defendant Helen C. Fenton.

CLAYTON E. EMIG,
Solicitor for the Complainant.

222 *Opinion of Court.*

Filed May 14, 1900.

In the Supreme Court of the District of Columbia.

CAROLINE LE FEVRE, Complainant,
vs.
LOUIS BEYER ET AL., Defendants. } No. 20324. Equity.

The bill in this case prays that the paper-writing bearing date July 14, 1896, and purporting to be the last will and testament of Mary Beyer, deceased, be decreed to be not her last will and testament. It also prays that a deed of trust placed on part of the property formerly owned by said decedent, by the defendant Louis Beyer, grantee of the devisees under said alleged will, be declared to be void, and that the trustees be enjoined from enforcing the same; also that a receiver be appointed to take charge of all the real estate of decedent pending this suit, and that the defendants in possession thereof under the said alleged will account for the rents and profits, and pay over the same to the receiver.

The complainant is the sister of said testatrix, and her other heirs and devisees are made parties to this suit.

The defendant Louis Beyer, who was the husband of said testatrix, filed a general demurrer to the bill, and other defendants filed answers.

These answers deny the charges of undue influence and want of testamentary capacity of said testatrix as made in the bill, and they also raise the question of jurisdiction by claiming that this court, sitting as an orphans' court, has exclusive jurisdiction to deter-
223 mine the validity of said will, and that complainant filed a caveat in said court to said will, which was there pending and undetermined, and claiming also that said complainant has a remedy by ejectment as to the real estate described in the bill if the will is invalid, and they ask the same benefit under their answers which they might have had by demurrers to the bill.

While the question of jurisdiction and other questions of law were so raised by demurrer and answers and were pending and undetermined in this cause, the parties, who are all of full age and competent to contract with each other, made and filed herein, signed by their solicitors respectively, the following stipulation:

"It is hereby stipulated by and between the parties to this cause, this 20th day of June, 1899, that the court may make an order certifying certain issues to be named in said order to be tried by a jury of the circuit court, and that the findings by said jury upon said issues shall be returned to this court, whereupon a decree shall be entered in accordance with said findings, all rights of appeal, as in cases of issues from the orphans' court, being hereby reserved."

On the same day this stipulation was filed the court, by a decree

reciting that the parties to this cause consented thereto, ordered three issues to be tried by a jury, and certified the same to the circuit court. These issues, in brief, were as follows:

1. Was said Mary Beyer of sound and disposing mind on July 14, 1896, when she executed said paper-writing?

2. Was the same procured by fraud, circumvention, or und-er influence, exercised by Louis Beyer, Jr., or Helen B. Johnson or any other person?

224 3. Were the contents of said paper-writing known to her when she executed the same?

As evidence of consent to this method of having a jury trial, the parties, by their solicitors, not only signed said stipulation, but they also signed a memorandum at the bottom of the order as follows:

"We assent to the passage of the above order."

A jury trial was had in December, 1899, and by its verdict the jury answered all the issues in the affirmative, thereby finding that while the testatrix was of sound and disposing mind and the contents of said paper-writing were known to her, still the execution of the same was procured by fraud, circumvention, or undue influence.

The justice presiding in the circuit court where the issues were tried, having refused to set aside the verdict and grant a new trial, the result of the trial there was certified to this court, and the complainant has asked for a decree in accordance with such verdict and under the said stipulation and record herein.

The cause has been fully argued, the defendants insisting that this court is without jurisdiction in the premises, and that the right to raise that question by their demurrer and answers is not waived by the agreement to said issues being certified to the jury and a jury trial had thereon, as stated.

And even if that question should be held against them, then that the verdict of the jury is only advisory to the court of equity, and, under the facts now returned to this court, with the verdict, being the whole testimony and proceedings in the circuit court, brought here by stipulation, the findings are unwarranted, and should not be considered in any decree to be made here.

225 It seems to me that the first point which the court should decide is that as to jurisdiction. Has the equity court in this District power to hear and determine whether a paper-writing purporting to be a last will and testament by which the title to real estate may be conveyed is or is not such last will and testament?

The bill was filed herein on April 7, 1899, and it is suggested that the act of June 8, 1898, gives exclusive jurisdiction to this court, holding a special term for orphans' court business, "to hear and determine all questions relating to the execution and to the validity of any and all wills devising any real estate within the District of Columbia."

The complainant contends that this court has jurisdiction, notwithstanding the said act to set aside or establish a will of real estate; and inasmuch as the character of the estate, as shown by the bill herein in this case, is equitable and not legal (the said testatrix having con-

veyed the same in trust to secure a debt still unpaid), that the complainant could not recover the same in an ejectment suit and must therefore of necessity come into a court of equity.

The defendants further contend that this court has no jurisdiction over the subject-matter of the suit in this case under the general principles of equity jurisprudence, and not having such, the parties cannot by stipulation confer jurisdiction.

12 Am. and Eng. Enc., 301, note 2.
12 Enc. of Pl. & Pr., 125, 129.

We must therefore inquire into the character of the case and see if it is one in its essential features of which a court of equity
226 can take cognizance. If the court can take jurisdiction of the subject-matter of the suit for any purpose, then the particular mode of procedure may be agreed upon by the parties, and the framing and sending of issues to a law court would be binding, although some other relief or other proceeding would have been in the usual course of practice.

If the case stated in the bill was only for probate of a will or to set aside an alleged will, I think, under the authorities in England and this country, the equity court would have no jurisdiction, the court having probate jurisdiction being authorized to determine the matter.

On this subject Judge Alvey, in delivering the opinion of the court in the case of Chase *v.* Winans, 59 Md., 480, used the following language:

"There has been no exception to the exercise of jurisdiction by a court of equity in this case. But it is proper for us to say, in order that this case may not be regarded as a precedent for the exercise of jurisdiction in such cases in the future, that it is no part of the ordinary jurisdiction of a court of equity to revise and correct the probate of wills. In regard to wills of real estate, if formally executed according to the requirements of the statute, unless it be in the cases of trusts or equitable estates or there be some legal impediment to the party's right to maintain an action of ejectment, such party must assert his right in an action at law."

If any person interested under this alleged will should offer the same for probate under section 8 of said act of June 8, 1898, as a will of real estate (which does not seem to have been done), the complainant as an heir-at-law would have an opportunity under the
227 other provisions of said act to contest its validity; but that act does not authorize the heir-at-law, who denies the existence or validity of a will, to take the initiative in setting up a pretended will in the orphans' court only to attack it. If there are good grounds for filing a bill in equity complainant would not be estopped from going into that court by having filed a caveat in the orphans' court when the paper was offered there as a will of personal property.

The complainant might find the deed of trust made by the testatrix as described in the bill a serious obstacle in the way of an ejectment suit, and that question cannot be so easily determined; and if it is an obstacle which would entitle her to come into a court

of equity to have removed, so that the question of "will or no will" could be fairly tried in an ejectment suit by a jury, then the stipulation to have such a trial by sending issues from this court in lieu of an ejectment suit ought to give the court authority for that method of procedure. This is clearly within the rulings in the case of Boyse *v.* Rossborough, 6 House of Lords Cases, 2. That was a suit in which an heir-at-law filed a bill in equity to impeach a will of real estate because of undue influence and fraud, and alleging that there was an outstanding term which was in the way of an action at law to try the title, and it was held that the court had a discretion to direct an issue *devisavit vel non* or to remove the obstacle to a suit at law, as it might think best.

There can be no doubt that the title to the property which the testatrix undertook to dispose of by this alleged will was and is an equitable title. If a judgment had been recovered against the owner in her lifetime an execution at law could not have been levied
228 upon it, but in order to subject it to the payment of the judgment a bill in equity would have been necessary.

Morsell *v.* First Nat'l Bank, 91 U. S., 357.

Being an equitable title, and the alleged will relating to it being obtained by fraud and undue influence, as is averred in the bill, could the truth of that averment be tried in an action at law to recover possession of said property?

An equitable title will not sustain a suit to recover land; the plaintiff must have the legal title.

Oaksmith *v.* Johnson, 92 U. S., 346.

Counsel for defendants argue, however, that under the provisions of the deed of trust which Mrs. Beyer placed on this property that she and her heirs and assigns were to be entitled to remain in possession until the sale of the property by the trustees for default in payment of the debt secured, and that if complainant is an heir and there are no assigns lawfully entitled to possession to the exclusion of the heirs that she would be entitled to the possession and could sue therefor.

I have doubts about the soundness of this argument, and on consideration of the whole case I am inclined to hold that the court of equity had such a case before it on the averments in this bill, if true, that it could grant equitable relief, and that if it has jurisdiction for any purpose, then it can grant full relief.

If counsel in an equity cause are of the opinion that a court of law is the proper forum for the trial of the controversy, they must, in fairness to the court and the opposite party, make the objection at the earliest opportunity.

229 Reynes *v.* Dumont, 130 U. S., 354.
Kilbourn *v.* Sunderland, *ib.*, 514.
Tyler *v.* Moses, 13 App. D. C., 428.

Of course, it is contended in this case that this objection was made in the demurrer and in the answers, and that therefore the point has been continually before the court.

The agreement to send issues to the jury and the appearance of parties and trial of those issues before the jury would seem to waive the objections previously made to that method of procedure, and might estop the parties from again returning to it if the verdict was unsatisfactory to them, even if the court's jurisdiction was doubtful. I need not, however, go that far in this case, for reasons already stated, and I hold that under the facts of this case it is too late for the defendants to be allowed to say that the manner chosen of having a jury trial to determine the question of will or no will is not lawful.

Strong *v.* Willey, 104 U. S., 512, 515.

The court having jurisdiction for some purpose, and the parties consenting to have the issues tried by a jury, and actually and earnestly trying the same, I think they must now be bound by such procedure, and that the only questions properly before the court at this time are:

First. Were said issues fairly tried? and

Second. Is the verdict one which this court can regard as equitable and proper?

There is no question about the power of the court of equity to direct a further trial by another jury if that course should seem proper or the chancellor may disregard the verdict entirely and pro-
230 ceed to hear and determine the cause without reference to it in a case where the issues were sent to the law court by the chancellor on his own motion, but where the parties have agreed that a decree shall be entered in accordance with the findings of the jury it may be doubtful if the parties can be heard or allowed to ask the court to disregard the verdict, unless some material error has been committed in the trial.

Looking at the case from every standpoint, I have reached the conclusion that the verdict was one which the evidence warranted the jury in finding; that the case was fairly presented to them by the justice presiding in the circuit court, and that there is no good reason shown for disturbing the said verdict.

There is some conflict in the evidence, and there are some inferences of fact which would support the verdict and which may fairly be drawn by a jury from the facts proven, and I cannot convince myself that any injustice has been done, either by the circuit court or the jury, in the conclusion reached. The witnesses were before them, and a motion for a new trial was argued and considered there, and the justice presiding was satisfied that the verdict was warranted by the evidence, otherwise he would have vacated it.

I will sign a decree in accordance with the prayers of the bill, the said stipulation of the parties, and the verdict of the jury.

JOB BARNARD, *Justice.*

231 *Decree and Reference to Auditor.*

Filed May 16, 1900.

In the Supreme Court of the District of Columbia.

CAROLINE LEFEVRE
vs.
LOUIS BEYER, JR., ET AL. } Equity. No. 20324.

This cause having come on to be heard by the court and having been argued by the solicitors for the respective parties, and the bill, answers, demurrers, exhibits, proofs, stipulations, and other proceedings having been read and considered by the court, it is thereupon, this 16th day of May, A. D. 1900, adjudged, ordered, and decreed by the court that the complainant herein is entitled to the relief prayed for in her bill of complaint.

And it is adjudged, ordered, and decreed that the paper-writing bearing date July 14th, 1896, and purporting to be a last will and testament of Mary Beyer, late of the city of Washington, District of Columbia, was not the last will and testament of the said Mary Beyer, deceased, but that the said Mary Beyer, deceased, died intestate as to real estate.

And it is adjudged, ordered, and decreed that the verdict of the jury upon issues certified out of this court as per stipulations of the solicitors of all the parties to this cause, being the heirs, next of kin, and distributees of the said Mary Beyer, deceased (which stipulation is part of the record of this cause and filed herein), whereby the said jury found that the said paper-writing purporting to be the last will and testament of said Mary Beyer, deceased, and bearing date the 14th day of July, A. D. 1896, was procured by the fraud, circumvention, or undue influence of one Louis Beyer, Jr.,
232 and Helen B. Johnson, or other person or persons, be, and the same is hereby, ratified, approved, and adopted as the judgment, decree, and conscience of this court.

And it is further adjudged, ordered, and decreed that the papers and proceedings in this cause be, and they hereby are, referred to the auditor of this court, to state an account between the party complainant and defendants herein of the rents, issues, and profits arising from the real estate in these proceedings mentioned or that reasonably and properly should have arisen thereout from the day of the date of the death of the said Mary Beyer up to and including the date of the decree in this cause.

And it is further adjudged, ordered, and decreed that the costs of the proceedings in this cause, both in this court and in the court to which the issues herein were certified to be tried by jury, be paid by the defendants herein, except the defendant Helen C. Fenton.

And it is further adjudged, ordered, and decreed that all questions arising between the parties to this cause as to the right to apply for a receiver or receivers or for the complainant to file a supplemental

bill for the purpose of having the real estate herein mentioned sold or divided in kind are hereby reserved until the further decree or order of this court.

And in stating the account herein directed the said auditor is authorized to take such further proof as may be deemed necessary and all questions are reserved until the coming in of his report.

By the court:

JOB BARNARD, *Justice.*

233 *Appeal.*

Supreme Court, District of Columbia.

CAROLINE LEFEVRE
vs.
LOUIS BEYER ET AL. } 20324.

The clerk will enter an appeal in this cause from decree of May 16, 1900, by Louis Beyer, Louis Beyer, Jr., in his own right and as executor, and Helen B. Johnson, and issue citation to Caroline Lefevre as appellee.

FRANKLIN H. MACKEY,
Sol. for Beyer, Sr.
JOHN RIDOUT,
For Appellants.

6, 2, 1900.

Appeal, as ordered, entered by cl'k, 1900, 6, 2.

Order Overruling Motion for Receiver.

Filed May 28, 1900.

In the Supreme Court of the District of Columbia.

CAROLINE LEFEVRE
vs.
LOUIS BEYER, SR., ET AL. } Equity. 20324.

This cause coming on to be heard upon the motion of the complainant for appointment of a receiver and having been
234 argued and submitted, it is this 26th day of May, 1900, ordered that said motion be, and it is hereby, overruled.

JOB BARNARD, *Justice.*

Order of Severance of Parties on Appeal.

Filed Jun- 2, 1900.

In the Supreme Court of the District of Columbia.

CAROLINE LEFEVRE
vs.
LOUIS BEYER ET AL. } In Equity. No. 20324.

The defendants, Louis Beyer, Sr., Louis Beyer, Jr., and Helen B. Johnson, having appealed from the decree in this cause, it is this 2d day of June, 1900, ordered that the said defendants have leave to sever on this appeal from the other defendants herein; that the bond on appeal to operate as a supercedeas be fixed in the penalty of one thousand dollars and the bond for costs only at one hundred dollars.

JOB BARNARD, *Justice.*

235 Supreme Court of the District of Columbia.

CAROLINE LE FEVRE
vs.
LOUIS BEYER, LOUIS BEYER, JUNIOR; HELEN B. Johnson, and Louis Beyer, Jr., Executor, &c. } No. 20324. In Equity.

The President of the United States to Caroline Le Fevre, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal entered in the supreme court of the District of Columbia on the 2nd day of June, 1900, wherein Louis Beyer, Louis Beyer, Junior; Helen B. Johnson, and Louis Beyer, Junior, executor, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this second day of June, in the year of our Lord one thousand nine hundred.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 2nd day of June, 1900.

CHAS. POE,
Attorney for Appellee, Caroline Le Fevre.

236 *Memorandum.*

June 6, 1900.—Appeal bond filed.

237 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 236, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 20324, equity, wherein Caroline Le Fevre is complainant and Louis Beyer *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 13th day of July, A. D. 1900.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1009. Louis Beyer *et al.*, appellants, *vs.* Caroline Le Fevre. Court of Appeals, District of Columbia. Filed Jul 19, 1900. Robert Willett, clerk.

ADDITION TO RECORD PER STIPULATION OF COUNSEL.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1900.

No. 1009.

LOUIS BEYER, LOUIS BEYER, JUNIOR; HELEN B. JOHNSON, AND LOUIS BEYER, JUNIOR, EXECUTOR, APPELLANTS,

vs.

CAROLINE LE FEVRE.

FILED SEPTEMBER 27, 1900.

Court of Appeals, District of Columbia, October Term, 1900.

LOUIS BEYER ET AL. *vs.* CAROLINE LE FEVRE. } No. 1009.

It is hereby stipulated and agreed that the following-described papers, to wit, the stipulation of counsel in equity cause 20324, Le Fevre *vs.* Beyer, filed therein June 20, 1899, and the order of court, filed in said cause on said 20th day of June, 1899, framing and certifying issues therein, and the consent of counsel thereto, ought to be a part of the record in this cause, but were inadvertently omitted therefrom; and it is further stipulated that the same shall form a part of the record herein and shall be printed by the clerk of this court as a part of this record.

FRANKLIN H. MACKEY,
Sol. for Louis Beyer, Sr.
CHAS. POE, *Sol'r for Appellee.*

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Stipulation for Trial by Jury.

Filed June 20, 1899.

In the Supreme Court of the District of Columbia.

LEFEVRE
vs.
BEYER ET AL. } Equity. No. 20324.

It is hereby stipulated by and between the parties to this cause this 20th day of June, 1899, that the court may make an order certifying certain issues, to be named in said order, to be tried by a jury of the circuit court, and that the findings by said jury upon said issues shall be returned to this court; whereupon a decree shall be entered in accordance with said findings, all rights of appeal as in cases of issues from the orphans' court being hereby reserved.

CLAYTON E. EMIG,
CHAS. POE, *Sol'rs for Compl't.*
JOHN RIDOUT,
For Louis Beyer, Jr., and Helen B. Johnson.
FRANKLIN H. MACKEY,
Sol. for Louis Beyer.
WOLF & COHEN,
Solicitors for Cohen and Wolf, Trustees.

Order Certifying Issues to Circuit Court.

Filed June 20, 1899.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

CAROLINE LEFEVRE
vs.
LOUIS BEYER ET AL. } Equity. 20324.

Ordered by the court this 20th day of June, 1899 (the parties to this cause consenting hereto), that the following issues to be tried by a jury be, and they hereby are, certified to the circuit court, to wit:

First. Was the said Mary Beyer at the time of the alleged execution of the paper-writing bearing date the 14th day of July, A. D. 1896, and purporting to be her last will and testament, of sound and disposing mind, memory, and understanding and capable of executing a valid deed or contract?

Second. Was the execution of the said paper-writing bearing date the 14th day of July, 1896, and purporting to be the last will and testament of the said Mary Beyer, procured by fraud, circumvention, or undue influence practised or exercised upon the said Mary Beyer by Louis Beyer, Jr., Helen B. Johnson, or by either of them or by any other person?

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Third. Were the contents of the paper-writing bearing date July 14th, 1896, and purporting to be the last will and testament of said Mary Beyer, known to her at the time of the alleged execution thereof?

CHAS. C. COLE,
Asso. Justice.

We assent to the passage of the above order.

CHAS. POE,
CLAYTON E. EMIG,
Sol'rs for Compl't.
JOHN RIDOUT,
For Beyer, Jr., & Johnson.
FRANKLIN H. MACKEY,
Sol. for Louis Beyer.
WOLF & COHEN,
Solicitors for Trustees Cohen and Wolf.

[Endorsed:] No. 1009. Louis Beyer *et al.*, appellants, *vs.* Caroline Le Fevre. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Sep. 27, 1900. Robert Willett, clerk.

SECOND ADDITION TO RECORD PER STIPULATION OF COUNSEL.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1900.

No. 1009.

LOUIS BEYER, LOUIS BEYER, JUNIOR; HELEN B. JOHNSON, AND LOUIS BEYER, JUNIOR, EXECUTOR, APPELLANTS,

vs.

CAROLINE LE FEVRE.

FILED OCTOBER 11, 1900.

Motion for a New Trial.

Filed December 12, 1899.

In the Supreme Court of the District of Columbia.

LE FEVRE *vs.* BEYER ET AL. } At Law. No. 43492.

On issues from the equity court in Le Fevre *v.* Beyer *et al.*, equity, No. 20324.

Now comes the defendant Louis Beyer, Senior, and moves the court to set aside the verdict and grant him a new trial in the above-entitled cause on the following grounds:

1st. That the verdict on the 2nd issue was contrary to the evidence.

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2nd. That the said verdict on said issue was against the weight of the evidence.

3rd. That there was no evidence to support the finding of the jury as to the second issue.

4th. That the said verdict is unreasonable.

5th. That the said verdict is inconsistent with the verdict upon the 1st and 3rd issues.

6th. That the court erred in its rulings upon questions of law; which rulings were duly excepted to at the time they were made.

7th. Misconduct of the jury in the jury-room.

FRANKLIN H. MACKEY,
Attorney for said Defendant.

Chas. Poe, Esq., attorney for plaintiff:

Take notice that on Friday next, at the opening of the court or as soon thereafter as counsel can be heard, I will call up the above motion.

FRANKLIN H. MACKEY,
Att'y for Defendant Louis Beyer.

Supreme Court of the District of Columbia.

SATURDAY, *January* 6, 1900.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

The following case was certified to criminal court No. 2, Justice Cole presiding:

CAROLINE LEFEVRE, Pl'ff,
v.
LOUIS BEYER ET AL., Def'ts. } At Law. No. 43492. Issues from Equity.

Upon hearing the motions of the defendants for a new trial, it is considered that said motions be, and they are hereby, overruled.

Memorandum.

1900, January 9.—Findings of jury certified to the equity court in accordance with the order of the trial court appearing on page 20 of the printed record.

In the Court of Appeals, District of Columbia, October Term, 1900.

LOUIS BEYER ET AL.
vs.
CAROLINE LE FEVRE. } Number 1009.

It is hereby stipulated by the parties hereto that the papers and proceedings of the supreme court of the District of Columbia enumerated and described below may be printed by the clerk of

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this court as part of the record herein, the same having been omitted from the transcript of record.

FRANKLIN H. MACKEY,
For Appellants.
CHAS. POE, *For Appellee.*

Memorandum of order of court certifying verdict of jury back to the equity side of the court; motion by Louis Beyer for new trial; order of court overruling motion for new trial.

[Endorsed:] No. 1009. Louis Beyer *et al.*, appellants, *vs.* Caroline Le Fevre. 2d addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Oct. 11, 1900. Robert Willett, clerk.

131 WEDNESDAY, *October* 17*th*, *A. D.* 1900.

LOUIS BEYER, LOUIS BEYER, JUNIOR, HELEN B. JOHNSON, and Louis Beyer, Junior, Executor, Appellants,
vs.
CAROLINE LE FEVRE. } No. 1009.

The argument in the above-entitled cause was commenced by Mr. John Ridout, attorney for the appellants, and was continued by Mr. Franklin H. Mackey, attorney for the appellants, and by Mr. Clayton E. Emig, attorney for the appellee.

THURSDAY, *October* 18*th*, *A. D.* 1900.

LOUIS BEYER, LOUIS BEYER, JUNIOR, HELEN B. JOHNSON, and Louis Beyer, Junior, Executor, Appellants,
vs.
CAROLINE LE FEVRE. } No. 1009.

The argument in the above-entitled cause was continued by Mr. Charles Poe, attorney for the appellee, and was concluded by Mr. Henry E. Davis, attorney for the appellants.

132 LOUIS BEYER, LOUIS BEYER, JUNIOR, HELEN B. Johnson, and Louis Beyer, Junior, Executor, Appellants,
vs.
CAROLINE LE FEVRE. } No. 1009.

Opinion.

Mr. Chief Justice ALVEY delivered the opinion of the court:

This appeal is from a decree of the supreme court of the District of Columbia, as a court of equity, declaring the paper purporting to be the last will and testament of Mary Beyer, deceased, null and void, as to the real estate of the deceased, and that said deceased died intestate as to her said real estate, according to the verdict of a jury found in the premises.

The bill was filed on April 7, 1899, by a sister of the deceased, and an heir-at-law, against the devisees in the paper purporting to be her last will and testament, the executor named therein, the surviving husband of the deceased, and against certain other parties holding conveyances conveying the legal title to the real estate of the deceased, and creating incumbrances thereon.

It appears from the allegations of the bill, and it is conceded to be the fact, that Mary Beyer, the deceased, died July 26, 1896, and that, on the 14th of that month, about two weeks prior to her death, she executed what purported to be her last will and testament. She was, at the time of her death, about sixty-five years of age, and had been, for a considerable period prior to her death, in a feeble state of health. She left surviving, her husband, Louis Beyer, and two sisters and the descendants of a deceased sister, as her heirs-at-

law; she never having had children of her own. Her estate consisted almost entirely of certain real estate situate in the city of Washington; her personal estate being very inconsiderable. Her interest in the real estate owned by her was of an equitable character merely, or an equity of redemption, with a reservation of the right of occupancy until default made in the payment of the debt for which the land and premises had been mortgaged, or conveyed in trust as security, or until sale made under the power in the conveyance. The deed of trust was made by Mary Beyer and her husband, Louis Beyer, on the 11th day of May, 1896, to Charles C. Glover and Myron M. Parker, as trustees, to secure the sum of $2,800, loaned to Mary Beyer, with interest, and all cost and expenses of executing the trust; the debt to become due three years after the date of the deed of trust. It is not claimed or pretended that any part of this debt so secured had been paid by Mary Beyer before her death, and it still remains unpaid; and the legal title or estate in the property remains vested in the trustees.

It is alleged by the bill, that Mary Beyer, the deceased, being in very feeble health, as we have already stated, was subject to such necessary treatment for her bodily ailments, and to the administration of drugs for her relief, that her mental faculties became greatly impaired, and to such an extent as to render her incapable of understanding the most ordinary affairs of life, or of knowing or appreciating the nature, character, value or extent of her estate, her right to exercise dominion over the same, the relatives whom she had, or the natural objects of her bounty, and wholly incapable of executing a valid deed or contract, and that this condition of mind and body existed for some time prior to her death, and was her condition down to the day of her death, and upon the date and at the time of the alleged execution of the paper purporting to be her will.

It is further alleged in the bill, that while the said Mary Beyer was so enfeebled and suffering, the defendants, Louis Beyer, Jr., an adopted son of the deceased, and Helen B. Johnson had a paper-writing prepared, purporting to be a last will and testament, under their direction and according to their instruction, by a lawyer of their own selection, whom the said Mary Beyer had never seen, and induced the said Mary Beyer to affix her name to the same while she was on her death-bed, and so feeble, both in mind and body, that she was unable to resist their importunities, and was not a free agent or able to form or express her wishes as to the disposition of her estate.

By the paper so prepared and signed, as it is alleged, the property of the deceased was disposed of in a way quite different from
133 and not in accordance with her real wishes and intent. That the entire estate and property of the deceased, with but small exception, was devised and bequeathed to the defendants, the said Louis Beyer, Jr., and Helen B. Johnson, and Louis Beyer, Jr., was constituted and appointed sole executor, without bond. That the terms and provisions of the paper so executed were concealed from the defendant, Louis Beyer, the surviving husband of the deceased,

by Louis Beyer, Jr., and Helen B. Johnson, until after the death of the said Mary Beyer, because, as it is alleged, they were afraid that he would protest against their unlawful schemes and thwart and prevent them; and they procured the signature to said paper-writing during his absence, which absence they had cunningly contrived to bring about.

It is then alleged, that the paper-writing that had been signed by said Mary Beyer was, on the 29th of August, 1896, submitted to the supreme court of this District, holding a special term for orphans' court business, by Louis Beyer, Jr., for probate, and that the same was then and there admitted to probate, and thereupon letters testamentary were issued to the said Louis Beyer, Jr., who at once qualified as executor. It is also alleged, that Louis Beyer, the surviving husband, filed a caveat to the probate of said paper; but in consideration of a conveyance, by Louis Beyer, Jr., and Helen B. Johnson, of a part of the real estate supposed to be devised to them by the paper admitted to probate, the said Louis Beyer caused his caveat to be withdrawn. It is also alleged, that, in consideration of a considerable sum of money paid by Louis Beyer, Jr., and Helen B. Johnson, Elizabeth K. Maus, a surviving sister of the deceased and one of her heirs-at-law, conveyed all her interest in and to the estate to said Louis Beyer, Jr., and Helen B. Johnson, by deed of quitclaim or release. It is further alleged, that Louis Beyer, the surviving husband, subsequent to the date of the deed to him by Louis Beyer, Jr., and Helen B. Johnson, made a deed of trust of the property so conveyed to him, to Adolph G. Wolf and Meyer Cohen, as trustees, to secure $2,000 loaned to him, and which is still due and owing.

The bill prays that the paper-writing purporting to be the last will and testament of Mary Beyer, deceased, be decreed and declared to be not her last will and testament, and that she died intestate; that the deed of trust made by Louis Beyer, the surviving husband, to Wolf and Cohen, trustees, be decreed to be null and void, and that said trustees be restrained from attempting to execute the trust created by the deed to them; that Louis Beyer, the surviving husband, Louis Beyer, Jr., and Helen B. Johnson, be decreed to account for rents and profits; that a receiver be appointed; and that the plaintiff may have such other and further relief as the nature and circumstances of the case may require.

The defendants, Louis Beyer, Jr., as devisee and executor, and Helen B. Johnson, answered the bill separately, though their answers set forth substantially the same state of facts. They deny that the deceased was incapable of making a valid will, and deny that the paper purporting to be the last will and testament of Mary Beyer, deceased, was obtained by any fraud or contrivance of theirs, or that they exerted any undue influence over the deceased, whereby she was induced to make her will. They aver and insist that the paper purporting to be the will of the deceased, was made and executed with full and entire understanding of its contents, and was the free and unconstrained expression of her feelings and intentions, and strictly in accordance with her own fixed intention as to the

manner of disposing of her property. They deny the jurisdiction of the court, and pray the benefit of a demurrer to the bill for that cause.

In the answer of Cohen and Wolf, trustees, they say they cannot admit or deny the material allegations of the bill, in respect to the circumstances under which the paper purporting to be the will of the deceased was executed. But they aver and insist that the plaintiff has not presented a case by her bill to entitle her to relief in a court of equity, and they pray the benefit of a demurrer to the bill for want of jurisdiction.

The defendant, Louis Beyer, the surviving husband, has demurred to the bill; thereby raising the question as to the jurisdiction of the court as a court of equity to take cognizance of the case, and to grant the relief as prayed.

At this stage of the case, and on the pleadings that we have stated, the parties, all being of full age and competent to act for themselves through their attorneys, came to an understanding or agreement as to the future proceedings in the cause; and, to carry out such agreement, they entered into the following stipulation:

"It is hereby stipulated by and between the parties to this cause, this 20th day of June, 1899, that the court may make an order certifying certain issues, to be named in said order, to be tried by a jury of the circuit court, and that the findings by said jury upon said issues shall be returned to this court; *whereupon a decree shall be entered in accordance with said findings;* all rights of appeal as in cases of issues from the orphans' court being hereby reserved." This stipulation was signed by the counsel for all the parties.

Upon the filing of this stipulation, and in pursuance thereof, the court passed an order formulating three issues to be tried by a jury; the order reciting the fact that the issues thus framed were made by the consent of the parties; and the issues so made were in substance the following:

1. Was said Mary Beyer of sound and disposing mind on July 14, 1896, when she executed said paper-writing?

2. Was the said paper-writing procured by fraud, circumvention, or undue influence, exercised by Louis Beyer, Jr., or Helen B. Johnson, or any other person?

3. Were the contents of said paper-writing known to her when she executed the same?

At the foot of the order directing these issues the parties, by their respective attorneys, signed the following memorandum of assent: "We assent to the passage of the above order."

The issues were transmitted to the circuit court for trial, and the trial took place in December, 1899; and after a protracted
134 and a hotly contested trial, a verdict was rendered, whereby the jury found on all the issues in the affirmative, thereby affirming that while the deceased was of sound and disposing mind, and knew the contents of the paper, yet the execution of the same was procured by fraud, circumvention, or undue influence.

It appears the defendants moved the court of law before which the trial took place for a new trial, but that was refused. Where-

upon the findings of the jury were certified to the court of equity; and with the verdict or findings, by stipulation, all the evidence that was produced before the jury, and which had been stenographically reported, was filed in the equity court for its consideration in connection with the verdict.

The cause was brought on to hearing upon the verdict and the evidence returned; and upon full consideration and after a carefully prepared opinion, the court passed the decree of the 16th of May, 1900, from which this appeal is taken.

By that decree the court approved, ratified, and adopted the verdict of the jury; and decreed, in accordance with the findings of the jury, that the paper-writing, bearing date the 14th day of July, 1896, and purporting to be the last will and testament of Mary Beyer, deceased, was not the last will and testament of said Mary Beyer, but that said Mary Beyer died intestate as to her real estate. The cause was then referred to the auditor to state an account of rents and profits; and the decree awarded costs against the defendants; and as to other and further questions that may arise they are reserved for further directions.

There have been two principal questions argued upon this appeal: First, as to the jurisdiction of a court of equity to take cognizance of the case, frame issues for trial by jury in a court of law, and to pass a decree such as that appealed from. And, second, assuming the jurisdiction to exist, whether the decree was justified by the verdict and the facts found in the case.

1. Before the act of Congress of June 8, 1898, entitled "An act conferring on the supreme court of the District of Columbia jurisdiction to take proof of the execution of wills affecting real estate, and for other purposes," the supreme court of this District, holding special terms for orphans' court business, had no power or jurisdiction to receive proof of and to admit to probate a will or codicil as a devise of real estate. Campbell *v.* Porter, 162 U. S. 478. That act, however, has changed the law upon the subject; but it has declared that it shall apply only to wills and testaments thereafter offered for probate; provided that any person interested under any will theretofore filed in said court *may offer the same for probate* as a will of real estate, whereupon such proceedings shall be had as by this act are authorized in regard to wills hereafter offered for probate. Section 8, act of Congress, June 8, 1898. This latter provision, of course, does not apply to the case of a will and testament made and admitted to probate, as to the personal estate of the deceased, prior to the passage of the act of Congress, and where the heir-at-law takes proceedings, not to have the will admitted to probate, but to have what professes to be the will of the deceased, declared null and void as to *to* the real estate of the deceased, since the passage of the act of Congress. If this case had originated under a will made since the passage of the act of Congress just referred to, the devisee could only claim by virtue of the probate of the will had under that act. The supreme court of the District, holding special sessions for orphans' court business, has been given full and plenary jurisdiction over the subject of admitting or refusing probate of

wills affecting real estate, just as in the case of wills and testaments affecting personal estate; and the judgment of that court cannot be called in question in any collateral proceeding. It is given by the statute an exclusive jurisdiction over the matter of probate, subject, of course, to review on appeal. Act of Congress, sections 2, 3, 6 and 7; Case of Broderick's Will, 21 Wall. 503; Allen *v.* McPherson, 1 Ho. L. Cas. 191.

But in the present case the paper purporting to be the will was made, and the party supposed to be the maker of it, died in 1896, before the act of Congress was passed; and the case, therefore, must be decided according to the law as it existed at the time of the death of the supposed testatrix, and when the paper was offered for probate as to the personal estate.

As we have seen, the title to the real estate owned by the deceased, and which is the subject of the alleged devise by the paper in question, was and is of a mere equitable character, or the mere right of an equity of redemption, the legal estate being vested in trustees. This equitable title, therefore, was not such as would, ordinarily, maintain an action of ejectment at law for the recovery of the land by the heir-at-law against parties claiming as devisees under the alleged will of the deceased, the grantor in the deed of trust. Lincoln *v.* French, 105 U. S. 614; Brobst *v.* Brock, 10 Wall. 519; Morsell *v.* Nat. Bank, 91 U. S. 357; Van Ness *v.* Hyatt, 13 Pet. 298; Bank of Metropolis *v.* Guttschlick, 14 Pet. 19.

Seeing, then, that there was no jurisdiction in the probate court, and that an action of ejectment can only, as a general proposition, be maintained on a legal title, for the recovery of the land by the heir-at-law, it would seem to be clear beyond doubt that the remedy for the heir-at-law was by a bill in equity, for the purpose either of having the impediment to the right of maintaining an action at law removed or restrained, or of having issues framed and sent to a court of law for trial by a jury. Otherwise there might be a failure of justice for the want of a fit and proper remedy by which to attain it.

The English decisions are numerous by which bills have been maintained in cases like the present. And without undertaking to refer to them all, we shall refer to some few of the more recent and controlling of them. And the first to which we shall refer is the case of Pemberton *v.* Pemberton, 13 Ves. 290. In that case, the bill was filed by the sisters of the testator, claiming as coheiresses-at-law, against the devisee of an equitable estate, and an issue, *devisavit vel non*, was directed, and which was tried in the common pleas, before Chief Justice Mansfield, and a verdict was found
135 in favor of the will. Upon motion for a new trial, heard before Lord Eldon, the chancellor said: "This bill is rather new in principle. I have no doubt, that heirs-at-law, entitled to the estates, of which their ancestors were seised, though only in equity, and therefore not having the means of proceeding at law, may come into equity, merely to recover the possession of those estates, and to have the deeds delivered up. I will not say, that in some cases they may not apply to have a will delivered up as an instrument that

ought not to vex their title; which, however, if it retains in it anything that has validity, ought not to be delivered up. But the course has been to file a bill, stating the reasons they cannot bring an ejectment; such as mortgages, outstanding terms, etc., and in general cases this court, as it cannot try the validity of a will, sends that to be determined by the proper tribunal; and afterwards does what is right." These latter remarks have been explained or qualified in subsequent cases.

The next case that may be referred to, is that of McGregor *v.* Topham, 3 Hare, 488, 496. That was a bill in equity filed on behalf of an heiress-at-law against a devisee, impeaching the validity of a will upon the ground of fraud and undue influence, and where the estate was equitable, and consequently no action of ejectment could be maintained. In that case there was an issue *devisavit vel non* sent to a court of law for trial, and the verdict was in favor of the respondent. The plaintiff, the heir-at-law, made a motion for a new trial, but the motion was refused by the vice-chancellor, and the case was taken to the House of Lords on appeal, where the decree was affirmed. 3 Ho. L. Cas. 132. In that case, it was held by the House of Lords that though there may be an outstanding legal estate, which compels the heir-at-law to come into equity, he cannot, on that account, claim a right to have the issue tried a second time, if the court, in the exercise of its discretion, should deem the first verdict satisfactory. And, as we suppose, for the same reason, the party claiming as devisee could have no right to a second or new trial of the issue.

The next and last case to which we shall refer on this question, is that of Boyse *v.* Rossborough, 6 Ho. L. Cas. 2. That is a case of close analogy to the present in many of its facts, and is of the highest authority, as it was most elaborately argued both at the bar and by the lord chancellor in the decision of the case.

In that case, there were outstanding terms which formed an obstacle to the maintenance of ejectment at law for the real estate in question, and the bill was filed by an heir-at-law against the devisee to impeach the will of the real estate as having been obtained by undue influence or fraud practiced upon the alleged testator. There was an issue *devisavit vel non* made up and sent to a court of law for trial, the defendant's counsel not objecting. The issue was tried, and the verdict was against the will. Motion was made for a new trial, and was overruled; whereupon an order was made declaring the paper-writing purporting to be the will, null and void as a devise of the real estate in the pleadings mentioned.

It was strongly argued on the part of the appellant, the devisee, that the course pursued by the court below in that case, that of granting an issue *devisavit vel non* on the application of the heir-at-law, in a suit instituted by him to impeach a will, was without justification in principle or precedent, and was contrary to the settled practice of courts of equity. That, according to the contention of counsel, when a devisee files a bill against an heir-at-law for the purpose of establishing a will, the heir-at-law has, no doubt, a right to an issue *devisavit vel non*, for the purpose of compelling the devisee to give full and clear proof of the will. But when the heir-at-law files a bill

against a devisee impeaching a will of real estate, the heir-at-law has no right to such issue. It was, however, conceded by the counsel for the devisee, that if there should be such impediments to the heir trying his title at law as to prevent him from maintaining an action at law for that purpose, the ordinary course was then to file a bill in a court of equity to remove such impediments, and leave the heir to his legal remedy; and if the impediments are of such a kind as to prevent the court of equity from effecting that purpose; if the circumstances are such that the heir cannot have relief at law in any other way, then, but then only, it may grant him an issue.

But on the part of the appellee, the heir-at-law, it was insisted by counsel, that the proceedings that had taken place in the court below were entirely regular, and in perfect conformity with the principles and practice of the court of chancery. That in a bill by an heir-at-law, impeaching a will on grounds such as existed in that case, and where undue influence or fraud had produced what might be denominated the absence of a disposing mind, it was entirely within the discretion of the court either to grant an issue *devisavit vel non* or to leave the heir to proceed by ejectment, the court of equity simply removing out of his way all those technical obstacles which might prevent the decision of his legal title: that the court is not bound to adopt one of those courses in preference to the other, but may take either in its discretion.

This contention of counsel for the heir-at-law was supported to its full extent by the unanimous judgment of the House of Lords, the opinion being delivered by Lord Chancellor Cranworth. It was held, that a court of equity had full power, both on principle and precedent, to exercise its discretion either to direct an issue, *devisavit vel non*, or merely to remove obstacles out of the way of the heir-at-law asserting his legal title in an action at law. It was, moreover, held, that an appellate court will not interfere with the exercise of that discretion, unless it appears that injustice has been, or will likely be, the consequence.

In answer to the argument that was made in that case, that the consequences of the course that was taken by the court below was prejudicial or injurious to the devisee, although adopted with the sanction, if not at the suggestion, of the counsel of the devisee, the lord chancellor said:

"In order to come to a just conclusion on this point, let us consider what was the precise practical difference to the appellant
136 from the adoption of the one course rather than the other. When on a bill, by an heir disputing a will, nothing is done beyond the removal of the legal impediments, then the heir brings an action of ejectment against the party in possession claiming as devisee; and assuming the heirship of the plaintiff to be, as it was in this case, admitted, the defendant begins at the trial, and adduces his evidence in support of the will. The heir then meets this case by such evidence as he can bring to impeach the will. The defendant replies, and the jurymen give their verdict. Precisely the same thing happens on an issue *devisavit vel non*. So far, therefore, as the trial is concerned, it is of no importance which course is taken.

Supposing the verdict to be against the will, and there is no motion for a new trial, then, if the proceeding was by ejectment, the heir obtains possession by virtue of a writ of *habere facias possessionem.* If the course taken was to direct an issue, then the court of chancery causes possession to be given to the heir. In either case the devisee is compelled to give up possession to the heir; and whether this result follows from one species of process or another cannot be material. If the result of the trial is different, and the verdict is in favor of the devisee, then, whatever course was taken for the purpose of trying the validity of the will, the bill of the heir will be dismissed, and the devisee will retain possession."

The question of the want of jurisdiction of equity, so much discussed at the bar in the argument of this case, is really not involved. It was only a question of discretion in the court below as to the manner of having the validity of the will tried; and the exercise of that discretion is not the subject of review, except where it is shown to be abused.

But in this case the parties made their own election as to how they would have the validity of the will tried. By solemn stipulation they agreed that issues should be formed and sent to a court of law for trial, and, upon the finding and verdict of the jury, that "*a decree should be entered in accordance with said findings,*" subject to the right of appeal. The devisees, by their counsel, cannot now be heard to urge, with any judicial propriety, that their stipulation, after all the cost, labor, and delay incurred, consequent upon that stipulation, should be treated as nugatory; that while they led the court to adopt a course, in its discretion, that it might not have adopted but for that stipulation, they should not now, because the result has been adverse to their expectations, be allowed to repudiate their solemn agreement for the manner of conducting the case. They must accept the result for the possibility of which they have stipulated.

2. With respect to the question, whether upon the facts the verdict of the jury ought to be sustained, we cannot seriously entertain a doubt. The jury have passed upon the facts in the trial of the issues, and it is only where the court can see that a new or second trial of the issues is required to effectuate justice that a new trial will be granted. In this case no motion for a new trial was made to the court of equity upon the return of the verdict to that court, upon the issues formed by it. It was for that court to say, whether the finding of the jury was satisfactory or not. The evidence taken at the trial of the issues would seem to have been eminently proper for the consideration of the jury. The justice before whom the issues were tried at law, as well as the justice in the court of equity, were entirely satisfied with the verdict. The trial in all respects seems to have been fairly conducted. The jury were fully and fairly instructed by the court, at the instance of the respective parties, and all the prayers offered by each side were granted, read and fully explained to the jury. We can perceive no substantial ground upon which the verdict should be set aside, and a new trial upon the issues granted. As there was no other evidence in the case than

that upon which the jury acted and based their verdict, if the court below was satisfied, as it appears to have been, that the verdict was the fair result and conclusion from that evidence, the court was certainly justified in accepting and adopting the verdict, and making it the basis of its decree. It would only be in a case where an appellate court could plainly see from the facts of the case, that the verdict of a jury, upon issues in a case like the present, was not fairly supported by the facts, that a new trial of the issues would be granted, as against the order of the court below. In this case, we perceive no such ground for a new trial. It follows that the decree must be affirmed, *and it is so ordered. Decree affirmed.*

137 THURSDAY, *December 6th, A. D.* 1900.

LOUIS BEYER, LOUIS BEYER, JUNIOR, HELEN B. JOHNSON, and LOUIS BEYER, Junior, Executor, Appellants,
vs.
CAROLINE LE FEVRE.
No. 1009.
October Term, 1900.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said supreme court, in this cause be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE ALVEY.

December 6, 1900.

138 TUESDAY, *December 11th, A. D.* 1900.

LOUIS BEYER, LOUIS BEYER, JUNIOR, HELEN B. JOHNSON, and Louis Beyer, Junior, Executor, Appellants,
vs.
CAROLINE LE FEVRE.
No. 1009.

On motion of Mr. Franklin H. Mackey, attorney for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States on giving supersedeas bond in the sum of three thousand dollars.

139 In the Court of Appeals of the District of Columbia.

LOUIS BEYER ET AL., Appellants,
vs.
CAROLINE LE FEVRE, Appellee.
No. 1009.

Now comes Louis Beyer, one of the appellants in the above-entitled cause, and informing the court that his co-appellants in this cause have refused to join with him in an appeal to the Supreme

Court of the United States from the decree of this court rendered herein, wherefore he prays the court that he may be allowed a summons and severance as to his said co-appellants and be allowed to prosecute this appeal separately in his own behalf.

FRANKLIN H. MACKEY,
Att'y & Sol. for Louis Beyer.

The appellants Louis Beyer, Jr., Helen B. Johnson, and Louis Beyer, Jr., executor, hereby waive notice of this motion, and also summons, and consent to the severance prayed for and that an order may be passed to that effect.

JOHN RIDOUT,
For Louis Beyer, Jr., in His Own Right and as Executor, and for Helen B. Johnson.

(Endorsed:) No. 1009. Louis Beyer, *et al.*, appellants, *vs.* Caroline Le Fevre. Motion for severance and waiver of notice. Court of Appeals District of Columbia. Filed Dec. 20, 1900. Robert Willett, clerk.

140 THURSDAY, *December 20th, A. D.* 1900.

LOUIS BEYER, LOUIS BEYER, JUNIOR; HELEN B. Johnson, and Louis Beyer, Junior, Executor, Appellants,
vs.
CAROLINE LE FEVRE.
No. 1009.
October Term, 1900.

It appearing to the court that Louis Beyer, Junior, Helen B. Johnson, and Louis Beyer, Junior, executor, have refused to join in the appeal of Louis Beyer herein to the Supreme Court of the United States, now on motion of Mr. Franklin H. Mackey, of counsel for said Louis Beyer, it is ordered by the court that he be allowed to prosecute said appeal separately in his own behalf.

Per MR. CHIEF JUSTICE ALVEY.

December 20, 1900.

141 Know all men by these presents, that we, Louis Beyer, as principal, and Louis Hartig, as surety, are held and firmly bound unto Caroline Le Fevre in the full and just sum of three thousand dollars to be paid to the said Caroline Le Fevre her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 22nd day of December, in the year of our Lord one thousand nine hundred.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said court, between Louis Beyer, Louis Beyer Junior; Helen B. Johnson and Louis Beyer Junior executor, appellants and Caroline Le Fevre appellee a decree was rendered against the said appellants and the said appellant Louis Beyer having severed from his co-appellants — having been allowed an appeal

to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Caroline Le Fevre citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington within 30 days from the date thereof,

Now, the condition of the above obligation is such, that if the said appellant Louis Beyer shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

LOUIS BEYER. [SEAL.]
LOUIS HARTIG. [SEAL.]

Sealed and delivered in the presence of—
FRANKLIN H. MACKEY.

Approved by—
M. F. MORRIS,
Associate Justice, Court of Appeals, D. C.

[Endorsed:] No. 1009 Louis Beyer, appellant *vs.* Caroline Le Fevre Supersedeas bond on appeal to Supreme Court U. S. Court of Appeals District of Columbia Filed Dec. 24 1900 Robert Willett, clerk

142 UNITED STATES OF AMERICA, *ss:*

To Caroline Le Fevre, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Louis Beyer is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Martin F. Morris, associate justice of the Court of Appeals of the District of Columbia, this 24th day of December, in the year of our Lord one thousand nine hundred.

M. F. MORRIS,
Associate Justice of the Court of Appeals of the District of Columbia.

Service accepted this 26th day of December, 1900.

CHAS. POE,
Att'y & Sol'r for Caroline Le Fevre.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec. 27, 1900. Robert Willett, clerk.

143 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 142, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Louis Beyer, Louis Beyer, Junior, Helen B. Johnson, and Louis Beyer, Junior, executor, appellants, *vs.* Caroline Le Fevre, No. 1009, October term, 1900, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 28th day of December, A. D. 1900.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 18,031. District of Columbia, Court of Appeals. Term No. 237. Louis Beyer, appellant, *vs.* Caroline Le Fevre. Filed January 22, 1901.